J. STEVEN GRILES

PI-SI-02-0053-I
REPORT OF INVESTIGATION

Redactions have been made throughout the report pursuant to 5 U.S.C.§ 552(b)(6) and (b)(7)(C) of the Freedom of Information Act.

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Introduction

In June 2002, our office initiated an investigation after a confidential source alleged that government contracts had been steered by high-level Department of the Interior (DOI or Department) officials to a company with which Deputy Secretary J. Steven Griles had been associated. Subsequently, we expanded our investigation to encompass three other concerns regarding Mr. Griles' conduct – one by our own accord, one at the request of the Secretary, and one at the request of Senator Joseph I. Lieberman (D-Connecticut).

Our initial investigation focused on a series of Bureau of Land Management (BLM) contracts with Advanced Power Technologies, Inc. (APTI) – a company that provides remote sensing technology known as "hyperspectral imaging," which, among other uses, allows BLM to obtain aerial images of plant populations. A confidential source alleged that DOI officials manipulated the procurement process for these contracts as a result of Mr. Griles' former association with APTI when he was employed as a lobbyist.

While addressing this first issue, we extended our investigation after becoming aware of a dinner party hosted by Marc Himmelstein, Mr. Griles' former business partner. Mr. Griles purportedly had his former partner host the event to acquaint newly appointed DOI officials with each other, including the Assistant Secretary for Land and Minerals Management and the directors of both BLM and the Minerals Management Service (MMS). We looked into this matter because the event could either be, or appear to be, a conflict of interest since Himmelstein is a prohibited source[1] who represents several clients interested in doing business with the Department.

In January 2003, Secretary Gale Norton requested that we investigate an allegation that Deputy Secretary Griles may have violated his recusal(s) by involving himself in a matter concerning the development of coalbed methane in the Powder River Basin. Since this allegation raised similar ethics concerns as the ongoing inquiries noted above, we again extended our investigation to accommodate the Secretary's request.

In April 2003, Senator Lieberman requested that our office investigate media reports concerning the Deputy Secretary, specifically referring to a series of alleged inappropriate meetings Mr. Griles had with his former clients or the clients of his former lobbying firm. The Senator also asked that we assess the Department's processes for ensuring that high-ranking officials comply with ethical recusal agreements.

Over the course of our investigation, we received the cooperation of hundreds of witnesses, including the Deputy Secretary, many of whom made themselves available for multiple interviews and were asked to recall details of events that happened several years prior.

[1] "Prohibited source" is defined at 5 C.F.R. section 2635.203(d) as "any person who: 1) is seeking official action by the employee's agency; 2) does business or seeks to do business with the employee's agency; 3) does activities regulated by the employee's agency; 4) has interests that may be substantially affected by performance or nonperformance of the employee's official duties; or 5) is an organization a majority of whose members are described in paragraphs (d) (1) through (4) of this section."

Nonetheless, we encountered many challenges in our effort to conduct a complete and accurate inquiry.

Our investigation took approximately 18 months to complete, due, in part, to our inability to obtain documents accurately depicting the former clients of the Deputy Secretary and the former and current clients of his former lobbying firm. Lists of prohibited sources in the Deputy Secretary's ethics file that itemize the clients of his former employer conflicted with actual client lists we obtained from said former employer. In fact, these client lists even conflicted with the Deputy Secretary's own statements regarding former clients.

In addition, a list of "current clients" for the Deputy Secretary's former employer continues to evolve on a daily basis. We have yet to obtain an accurate "snapshot" at any given time of whom the Deputy Secretary's former employer represents or represented. These clients, many of whom are in the oil and gas industry, also continually merge, change names, and develop subsidiary companies. Due to these complicated matters, we were often in the unenviable position of having to depend on the personal recollections of a small group of individuals. In fact, when we interviewed the Deputy Secretary and discussed our efforts to discern the status of his client list, he commented simply, "Good luck."

We were further challenged during our investigation by an unanticipated lack of personal and institutional memory; conflicting recollections; poor record-keeping, particularly by the Department's Ethics Office; the bifurcation of ethics advisors; a lack of reliable written evidentiary material, and the inadequacy of congressional lobbying reports as evidentiary items. We also realized at the beginning of our investigation the need to proceed deliberately given the multitude and complexity of the allegations.

Nonetheless, we extended and exhausted all available resources, and through this investigative report, we have tried to provide as full and accurate a depiction of the Deputy Secretary's involvement with his former clients and the clients of his former lobbying firm as possible.

We organized this report into four distinct investigations: (1) BLM Contracts with APTI, (2) April 15, 2002 Dinner Party, (3) Coalbed Methane Allegations, and (4) Alleged Inappropriate Meetings. In addition, at Senator Lieberman's request, we are including in this report a separate assessment of the ethical recusal process at DOI.

For the convenience of the reader, we have provided an index of names and titles preceding each separate investigation and other visual aids throughout the report.

Acronyms

AEEG – Alliance for Energy Economic Growth
AGA – American Gas Association
APD – application for permit to drill
API – American Petroleum Institute
APTI – Advanced Power Technologies, Inc.
BIA – Bureau of Indian Affairs
BLM – Bureau of Land Management
CEO – Chief Executive Officer
CEQ – White House Council on Environmental Quality
CFR – Code of Federal Regulations
COE – U.S. Army Corps of Engineers
CZMA – Coastal Zone Management Act
DAEO – Designated Agency Ethics Official
DoD – Department of Defense
DOE – Department of Energy
DOI – Department of the Interior (or Department)
DOJ – Department of Justice
EEI – Edison Electric Institute
EIS – Environmental Impact Statement
EPA – Environmental Protection Agency
EPRI – Electric Power Research Institute
FLPMA - Federal Land Policy and Management Act of 1976
FWS – U.S. Fish and Wildlife Service
GIS – Geographic Information Sciences
GSA – General Services Administration
JOFOC – justification for other than fair and open competition
KCI – Kentuckians for the Commonwealth, Inc.
Lidar – light detection and ranging
LLC – Limited Liability Corporation
MMS – Minerals Management Service
MOU – Memorandum of Understanding
National – National Environmental Strategies
NES, Inc. – subsidiary company of National
NIFC – National Interagency Fire Center
NMA – National Mining Association
NPS – National Park Service
NSA – National Security Agency
OGE – Office of Government Ethics
OIG – Office of Inspector General
OMB – Office of Management and Budget
OSM – Office of Surface Mining Reclamation and Enforcement
SMCRA - Surface Mining Control and Reclamation Act
SOL – Office of the Solicitor
SOW – statement of work
U.S.C. – United States Code
USGS – U.S. Geological Survey

List of Charts and Graphics

Investigation of BLM Contracts With APTI

“BLM Contracts With APTI” Names and Titles

Name	Title
Abbey, Robert	State Director, BLM Nevada State Office
Bisson, Henri	State Director, BLM Alaska State Office
Cason, James	DOI Associate Deputy Secretary
Clarke, Kathleen	Director, BLM
Elliott, Timothy	DOI Deputy Associate Solicitor, Division of General Law
Griles, J. Steven	DOI Deputy Secretary
Groat, Dr. Charles	Director, USGS
Hamilton, Larry	Director, NIFC
Hartzell, Timothy	Director, Office of Wildland Fire Coordination
Himmelstein, Marc	President, National Environmental Strategies
Hughes, James	Deputy Director, BLM
Jarrett, Jeffrey	Director, OSM
Jones, Marshall	Deputy Director, FWS
Jones, Randy	Deputy Director, NPS
Murphy, Timothy	Deputy Director, NIFC
Norton, Gale	DOI Secretary
Simmons, Shayla	DOI Designated Agency Ethics Officer
Tipton, Hord	DOI Chief Information Officer
Waidmann, Brian	DOI Chief of Staff
Wooldridge, Sue Ellen	DOI Deputy Chief of Staff

BLM Contracts With APTI

Background

In 1995, Mr. Griles entered into a business relationship with National Environmental Strategies (National), whose president, Marc Himmelstein, had been a longstanding personal friend. After joining National, Messrs. Griles and Himmelstein developed two "spin-off" companies, J. Steven Griles and Associates, LLC, and NES, Inc.,[2] both under the umbrella of National. Mr. Griles served as vice president of National and president of the two subsidiary companies. In March 2000, J. Steven Griles and Associates, LLC, entered into a consultant agreement with Advanced Power Technologies, Inc. (APTI).

APTI has both federal and commercial customers, specializing in "developing and incubating breakthrough technologies" and "integrating advanced technology systems and products." The company, which is based in Washington, D.C., has expertise in a remote sensing technology known as hyperspectral imaging. This technology assists in identifying as well as quantifying materials in an image by using aerial photography. APTI encouraged BLM to use hyperspectral imaging for a variety of geographical imaging projects. BLM ultimately decided to use this technology coupled with Lidar[3] principally for observing plant populations to determine which ones are highly combustible, the knowledge of which would assist in preventing wildland fires. BLM also decided to use the technology to conduct inventories of invasive or noxious weeds and to examine plants for grazing.

Prior to being nominated as Deputy Secretary, Mr. Griles had secured opportunities for APTI to provide briefings of its technology to BLM, which resulted in BLM awarding APTI the first of five contracts that had a cumulative value of approximately $2 million.

After Mr. Griles was confirmed as Deputy Secretary on July 17, 2001, he sold his interest in National; J. Steven Griles and Associates, LLC; and NES, Inc., to National and now receives an annual severance agreement payment of $284,000 for 4 years. National assumed the consultant arrangement with APTI and receives a monthly retainer fee from the company, plus expenses for services rendered. There is no special fee or charge if any specific contract or business should result from its services.

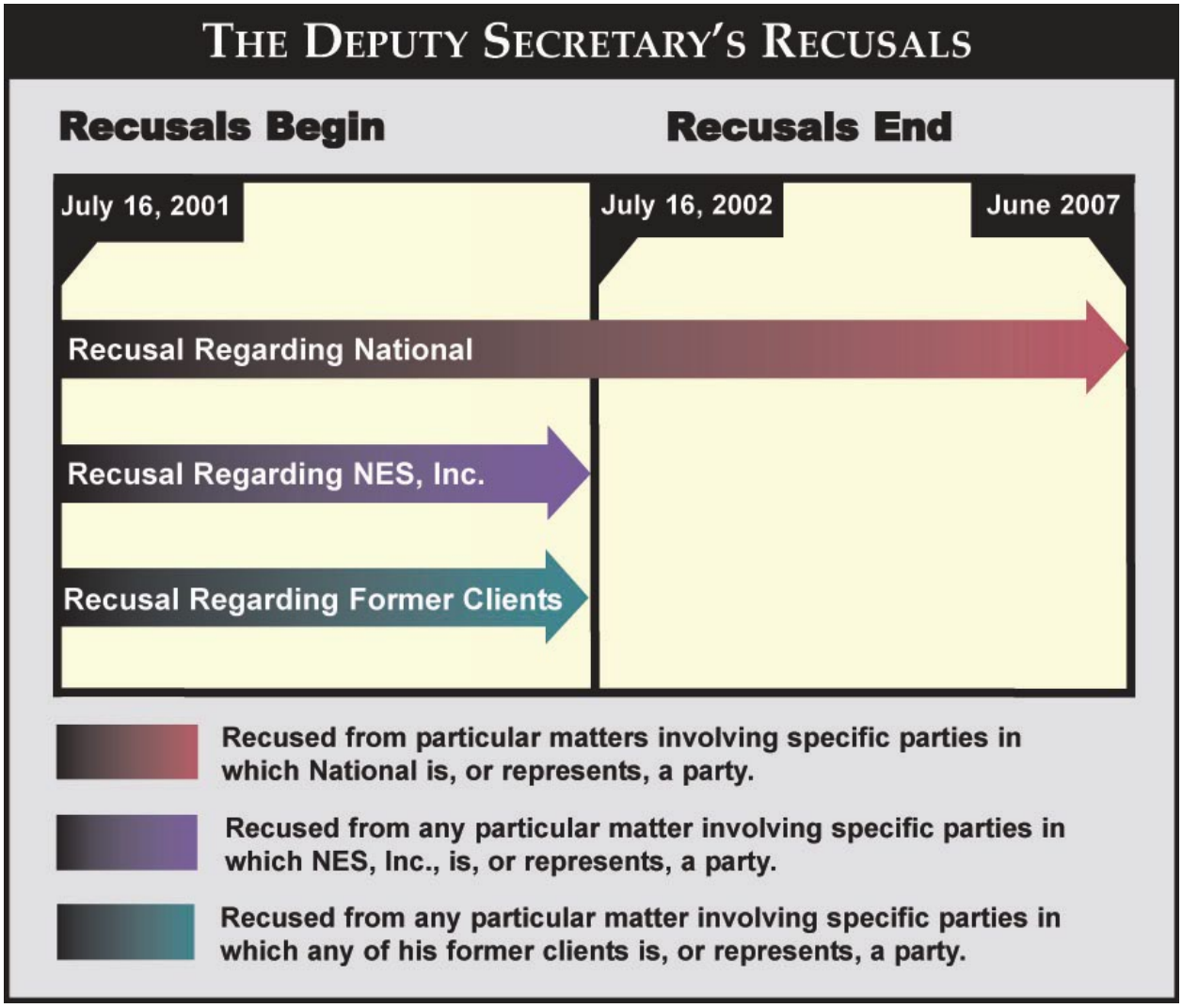
A former BLM official who works for National became the principal lobbyist for APTI after Mr. Griles left. A lobbyist with Chambers, Conlon and Hartwell, Inc., and a longtime personal friend of Mr. Griles, also represents APTI.

On August 1, 2001, Mr. Griles executed three written recusals restricting his involvement with his former employers and clients, as shown in **Figure 1**. The recusals restrict Mr. Griles from (1) for one year, from any particular matter involving specific parties in which any of his former clients is, or represents, a party; (2) for one year, acting in any particular matter involving

[2] NES, Inc., is a stand-alone company and is not an acronym for "National Environmental Strategies."
[3] Lidar stands for "light detection and ranging." It is a remote sensing technology often used for large-scale, high-accuracy mapping.

specific parties in which NES, Inc., is, or represents, a party; (3) for the duration of the continuing financial interest (severance payment that would be disbursed over 4 years), participating personally and substantially in any particular matter which would have a direct and predictable effect on National's ability or willingness to make the pre-agreed severance payment, and (4) for 2 years after the final payment is received (2007), from acting or participating in any particular matter involving specific parties in which National is, or represents, a party.

Figure 1



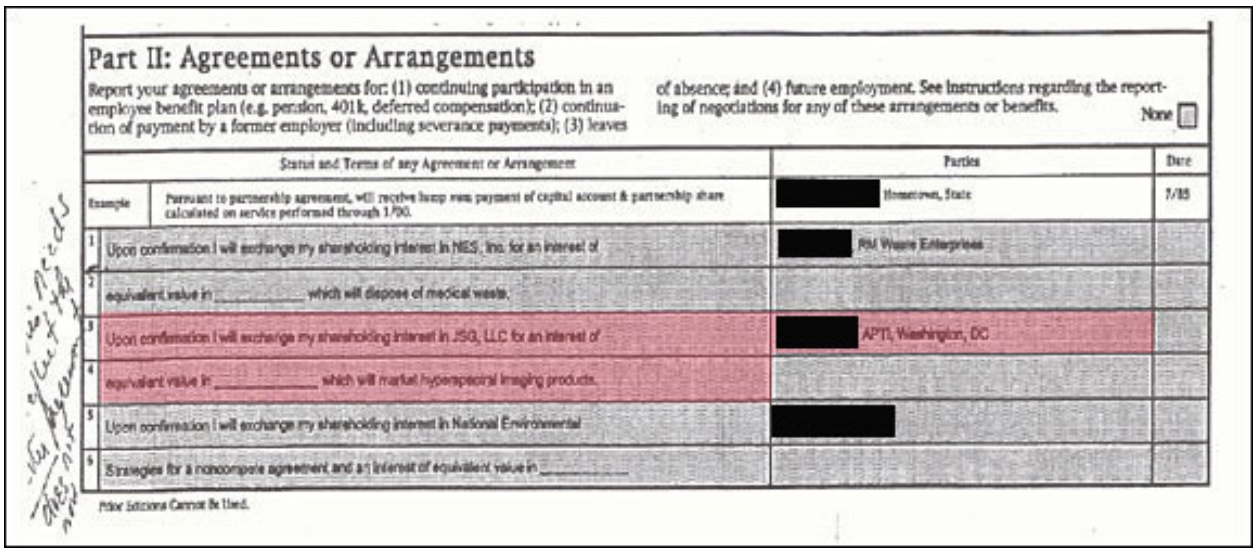
On June 17, 2002, we initiated an investigation of the Deputy Secretary based on information from a confidential source alleging that high-level DOI officials had steered several contracts to APTI. The complainant specifically alleged that Deputy Secretary Griles had an association with APTI and that the procurement process for the contracts had been manipulated by BLM headquarters managers and forced upon BLM field elements in Alaska, Nevada, and Oregon.

OIG Investigation

At the outset of this investigation, we obtained and reviewed all appropriate documents contained in Deputy Secretary Griles' DOI ethics file and, via subpoena, pertinent documents from APTI and National. During the investigation, we reviewed all five contracts between BLM and APTI and other documents associated with them. We conducted approximately 100 interviews during this particular investigation. As we developed the details of these contracts, we asked the General Services Administration's (GSA) Office of Inspector General (OIG) to review the contract files because of its unique expertise in contract and procurement matters. Its comments and observations are included throughout this report.

Our review of Mr. Griles' DOI ethics file discovered a draft Standard Form (SF)-278[4] by Mr. Griles that noted, "Upon confirmation I will exchange my shareholding interest in JSG, LLC [J. Steven Griles and Associates, LLC] for an interest of equivalent value in _____, which will market hyperspectral imaging products." Next to this statement, in schedule C, in a column entitled "parties," was the following comment: "[name removed], APTI, Washington, D.C," as shown in **Figure 2**. We ultimately determined that this exchange did not occur. The final signed SF-278 does not contain this language. Instead, it refers to a severance agreement between Mr. Griles and National.

Figure 2



Part II: Agreements or Arrangements

Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits. None ☐

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/00.	[redacted] Hometown, State	7/88
1	Upon confirmation I will exchange my shareholding interest in NES, Inc. for an interest of	[redacted] RM Waste Enterprises	
2	equivalent value in _____ which will dispose of medical waste.		
3	Upon confirmation I will exchange my shareholding interest in JSG, LLC for an interest of	[redacted] APTI, Washington, DC	
4	equivalent value in _____ which will market hyperspecral imaging products.		
5	Upon confirmation I will exchange my shareholding interest in National Environmental	[redacted]	
6	Strategies for a noncompete agreement and an interest of equivalent value in _____		

Prior Editions Cannot Be Used.

APTI personnel were questioned about the language on the draft SF-278. Through their attorneys of Crowell and Moring, Washington, D.C., they insisted that such a proposal was never considered or brokered by APTI management. Himmelstein was also questioned about this statement, and he stated that he too was unaware of any such proposal.

When interviewed, Mr. Griles stated that he was not aware of how or why this draft document was in his ethics file. He stated that when he first agreed to work with APTI, there

[4] Executive Branch Personnel Public Financial Disclosure Report.

was a general discussion that at some point in time he could have an interest in the company. These discussions resulted in the extremely low fee that he charged APTI for his services. However, the issue never came up again, and, in fact, Mr. Griles claims he never attained any interest in APTI. Mr. Griles speculated that this matter came up during his discussions with the former DOI Ethics Officer at the time of his nomination. He believes that she may have drafted this document.

We interviewed the former DOI Ethics Office Director and she denied that she had ever seen the draft disclosure statement with the comments about APTI. She does not believe that she prepared it. She recalled that Mr. Griles, along with his attorney and accountant, created several draft disclosure forms in an attempt to satisfy the requirements of the Office of Government Ethics (OGE). She does not recall any discussion with Mr. Griles pertaining to APTI.

We interviewed an ethics program specialist in the DOI Ethics Office. She reviewed the draft Schedule C, part II of an SF-278 that contained language indicating that Mr. Griles would exchange his interest in J. Steven Griles and Associates, LLC, for an interest in APTI. She identified this document as part of a draft financial disclosure report provided to her by Mr. Griles' special assistant in connection with working on Mr. Griles' first annual report, which was executed on March 4, 2002.

The ethics program specialist stated that someone completing an SF-278 would typically take an old report and mark up any changes and provide it to her in order for her to type up a new form. She opined that this document was a draft, which predated Mr. Griles' initial entry on duty SF-278, dated April 24, 2001. She said that in this case, Mr. Griles' special assistant marked up changes on a draft document that somehow ended up in Mr. Griles' official Ethics Office file. She stated that the language regarding exchanging shares was not included in the final copy of Mr. Griles' initial entry on duty SF-278. She did not recall ever working with this specific language.

Mr. Griles' special assistant, who formerly worked for Mr. Griles at National, was interviewed. She acknowledged that she has assisted Mr. Griles in preparing his financial disclosures. She explained that the DOI Ethics Office provides a boilerplate document and that Mr. Griles then provides her with the information to be inserted in that document. The special assistant then prepares the documents for Mr. Griles' signature and submittal. She stated that she does not have any personal knowledge of Mr. Griles' financial status. She vaguely recalled the language pertaining to Mr. Griles' divestiture of his interests in National, J. Steven Griles and Associates, LLC, and NES, Inc. She advised that she has no direct recollection of the draft financial disclosure where blanks were to be filled in to reflect that he was exchanging his interest for an equal share in APTI. She advised that her practice would have been to provide Mr. Griles with the forms, indicating that information needed to be inserted. Mr. Griles would then give her the data or information and she would insert it onto the form. She could provide no further information regarding a possible exchange of shares between Mr. Griles and APTI.

BLM Alaska State Office Contract

The first APTI contract was awarded for the BLM Alaska State Office on August 14, 2000, subsequent to briefings that APTI provided to senior BLM officials during the spring of 2000. These briefings were the result of Mr. Griles' direct lobbying efforts. Key BLM officials at these meetings included Hord Tipton, former Chief Information Officer for the BLM and current DOI Chief Information Officer; Henri Bisson, former BLM Assistant Director for Renewable Resources and Planning and current BLM Alaska State Office Director; and a BLM geographic sciences coordinator, who subsequently became the project officer for this particular contract.

The National Security Agency (NSA) awarded this contract under an interagency agreement and the Economy Act.[5] NSA modified an existing contract that it had with APTI to include this work, which consisted of the collection of remote sensing data relative to portions of Alaska's Oil Pipeline and Gulkana River areas. The total amount of this contract was $375,000 for the data collection and $25,000 paid to NSA for administrative costs.

Mr. Griles was interviewed regarding his knowledge of and role in the awarding of this contract. He stated that prior to his nomination and confirmation as Deputy Secretary he contacted Tipton to arrange for APTI to provide a briefing to BLM. Mr. Griles recalled two occasions when APTI provided briefings to BLM during the spring or early summer of 2000. He was aware that these briefings eventually led to a contract with the BLM Alaska State Office to explore the APTI technology. However, Mr. Griles claimed that he was not involved in the actual procurement process and he did not follow up on the contract after becoming Deputy Secretary.

Tipton was interviewed regarding this contract, and he recalled that prior to awarding APTI the Alaska project, he attended at least two meetings where APTI provided briefings concerning its technology. He recalled that Mr. Griles, who was working for APTI at the time, had arranged for these briefings. Tipton said he did not have a specific recollection about Mr. Griles contacting him to set up these briefings, but he stated that it was possible that Mr. Griles had. He also did not recall whether Mr. Griles was actually present at the second meeting. He recalled that after Mr. Griles made the introduction – of at least the first meeting – he left the room.

Tipton also stated that at the time, he had been acquainted with and, in fact, had previously worked for Mr. Griles when Mr. Griles was the Assistant Secretary for Land and Minerals Management. Tipton was asked if he would have met with APTI representatives had it not been for Mr. Griles' introduction of them, and he stated that he would have because APTI's technology was definitely something BLM was interested in. He was also asked if he would have funded the Alaska project had it not been for his previous relationship with Mr. Griles, and he again stated that he would have, based on the identification of a project that had a legitimate use for BLM.

[5] The Economy Act is found at 31 U.S.C. §§ sections 1535 and 1536.

Tipton said that after meeting with APTI representatives and participating in discussions with attendees, the BLM geographic sciences coordinator was tasked to follow up to see if there was a need within BLM to use the technology. Tipton, who had previously served as BLM's Assistant Director for Resources, said he thought APTI's technology could be useful to BLM, especially in the identification of noxious and invasive weeds. He also felt BLM could save a lot of money using remote sensing, even though the technology was expensive, simply because of the vast amount of land that needed to be surveyed.

Tipton stated that after the BLM geographic sciences coordinator identified a project in Alaska, he found $400,000 in his information technology fund to finance the project. It was Tipton's recollection that the proposed project was originally for a larger geographic area but that the project had to be narrowed because only his $400,000 was available.

Tipton stated that he had neither heard that the Alaska State Office was unhappy with the product nor was he aware that the final product was not delivered until the spring of 2002. Tipton added that since the Alaska project, the Office of Management and Budget Circular A-11 has been published, which now includes procedures regarding information technology investments. Tipton stated that if the Alaska project were performed today, there would be a requirement for quarterly reporting. Ostensibly, this reporting would identify poor or unsuccessful projects as well as late delivery by contractors. He stated that these requirements did not exist when the Alaska project was performed.

Tipton denied that the ensuing contract was the result of Mr. Griles' involvement or that there was ever any pressure or influence to award any contract to APTI. Tipton also denied that he had any relationship with APTI other than the business contacts cited above.

Bisson was interviewed regarding this contract. He recalled that during the spring of 2000, he attended a meeting at BLM headquarters during which APTI provided a demonstration of its technology. He recalled that Mr. Griles introduced APTI and attended the meeting. Bisson related that he was acquainted with Mr. Griles in the 1980s when Mr. Griles served as Assistant Secretary for Land and Minerals Management. At the time of the APTI meeting, Bisson was serving as BLM Assistant Director for Renewable Resources and Planning. Bisson subsequently left that position in July 2002 to assume his current duties.

Bisson said APTI would not have needed Mr. Griles to "get their foot in the door." Its technology was of keen interest to the BLM, and as a result, BLM would most likely have agreed to meet with APTI representatives regardless of who made the request. Bisson advised that, in his opinion, APTI did not receive any special or preferential treatment.

Bisson also recalled that all of the attendees at the APTI briefing were excited about the technology that APTI presented. Bisson added that he had invited the BLM geographic sciences coordinator of his office to attend this meeting because he was BLM's remote sensing coordinator. After the meeting, the BLM geographic sciences coordinator was tasked to query the field for any interest in doing a pilot project with this technology.

As a result of the BLM geographic science coordinator's queries, a project in Alaska was developed to monitor the pipeline as well as to map vegetation. Bisson recalled that there was a general consensus among BLM's management team that this would be a good project. He stated that the final decision would have been up to Tipton because Tipton, as the BLM Chief Information Officer, controlled the source of funding.

Bisson was also asked if the ensuing contract was the result of Mr. Griles' involvement. He denied this and also stated that he had never received any pressure or influence to award a contract to APTI. Bisson also denied that he had any relationship with APTI other than the business contacts cited above.

The BLM geographic sciences coordinator was interviewed regarding this contract. He advised that he first became acquainted with APTI in early 2000 when the company provided briefings at DOI. He stated that Mr. Griles introduced APTI at these briefings. He recalled that he attended at least two briefings by APTI and that they were both at the Main Interior Building. He thought Mr. Griles was at both meetings but left after making introductions. According to the BLM geographic sciences coordinator, these briefings were unusual because vendors typically contacted him at his office in order to arrange technological briefings of this nature. He speculated that in this instance, APTI's contacts at this higher level were most likely the result of Mr. Griles' previous relationship with DOI. He stated this was only his opinion and that no one had ever actually told him this.

The BLM geographic sciences coordinator stated that during APTI's briefing, he was the person who suggested that BLM might be interested in the combination or merging of two different types of remote sensing technologies – hyperspectral imaging and Lidar. He related that after the briefings, Tipton and Bisson tasked him to develop a project for APTI. At the time of its briefing, APTI was only involved with hyperspectral imaging. He was unaware of any company who had yet merged these two technologies. He did not consider that his suggestion might have given APTI an advantage over potential competitors. When asked, the BLM geographic sciences coordinator admitted that at that time, there were probably other contractors who had technology as good as APTI.

The BLM geographic sciences coordinator discussed APTI's technology with BLM field elements and ultimately identified a potential project in Alaska. He then notified Tipton, who in turn obtained the $400,000 in information technology money to fund the project.

The BLM geographic sciences coordinator also stated that he developed the requirements for this contract. To accomplish this, he worked with APTI personnel, and during these contacts, he learned that APTI had an existing contract with NSA. He reported this to the BLM contracting office, which then "piggybacked" onto this contract and provided the funding directly to NSA. According to the BLM geographic sciences coordinator, he also personally wrote the Economy Act Determination that justified entering into the interagency agreement with NSA for this contract.

The BLM geographic sciences coordinator stated that he also prepared the statement of work (SOW) for the contract. When he began, he researched APTI's Web site to obtain

information about the company and its capabilities. He insisted that APTI did not write the SOW, but he acknowledged that he had "bounced ideas off them" to obtain the information that was needed. Our investigation determined that this SOW contains a requirement to use the Aurora TM sensor or a sensing device with equivalent qualities. The Aurora TM is proprietary to APTI and thus only APTI could have met this requirement.

When asked, the BLM geographic sciences coordinator stated that APTI actually determined the approximate cost for this project. He believed that the cost was based solely on the amount of money that BLM had available. He conceded that this implies that APTI was aware of the funding level, which, in turn, determined the project size and to some extent its scope. He conceded that this could give the appearance that APTI suggested the project and that BLM simply agreed with it. He admitted that this was not a normal procurement practice.

The BLM geographic sciences coordinator was asked if there were other contractors who could have accomplished this project. He stated that he was sure there were. When asked why other contractors were not considered, he said that this was primarily because Tipton had not provided the money until July of 2000. This, in turn, created a sense of urgency because it was important to collect the images while the vegetation was still green. He added that he would not go so far as to say this contract was written exclusively for APTI because BLM was clearly looking for this particular type of technology. He said he viewed this as an opportunity to see if APTI's technology could actually work. Based on the short time frame, however, he said he also knew that only APTI would be able to accomplish the project.

The BLM geographic sciences coordinator was asked if this project could have waited until the next year since it had not been previously scheduled. He replied that the project could have been postponed, but the concern was that the money might not have been available the following year. He denied that he had any personal or social contact or relationship with APTI principals or employees other than the business contacts cited above.

The BLM geographic sciences coordinator stated that sometime after this contract was awarded, he and BLM personnel from the Alaska State Office were informed by Department of Defense (DoD) personnel that APTI was "hyping" the success of the BLM Alaska project. He stated that his office then had a conference phone call with APTI during which his office asked APTI not to use the Alaska project as a successful reference.

The BLM geographic sciences coordinator explained that he was aware that the BLM Alaska State Office had some concerns with the results of the contract. He stated that while the BLM Alaska State Office was very satisfied with the Lidar results, which involved the pipeline, it was less impressed with the hyperspectral imaging of plants. He said he personally agreed with this assessment. It was his understanding that APTI did not have a background in vegetation and had problems working with it. He explained that plants would have a much more diffused environment than what APTI would have encountered doing projects for defense matters.

The Alaska contract required that the deliverables, or final product, would be provided by August 21, 2001. A project officer for the BLM Alaska State Office was interviewed and stated

that he has never seen the contract or the SOW, so he does not know exactly what was required contractually. However, he stated that this was a BLM headquarters project, not an Alaska office project. The project officer reported that the Alaska State Office did not receive any deliverables from this contract until the summer of 2002, after our investigation commenced.

The project officer added that employees in the Alaska office were not satisfied with the project. Specifically, since APTI did not have a background in vegetation identification, the Alaska State Office personnel had to travel to APTI headquarters to assist APTI's technicians. According to the project officer, the Alaska State Office has not yet been able to make any use of the hyperspectral product obtained from APTI under this contract. He believes, however, that the Lidar data obtained has potential value because it provides an accurate portrayal of the landscape around the pipeline.

A cartographer for the BLM Alaska State Office was interviewed regarding this contract. He confirmed the project officer's claim that the Alaska State Office had not received the final results of APTI's work under the contract until the summer of 2002.

An officer for APTI was interviewed regarding this contract. He stated that he was unaware of the Alaska State Office's claim that it had not received the required data. Instead, he stated that he understood that a full set of data had recently been delivered to BLM. He claimed that in all likelihood, BLM was in possession of the data but that it simply did not have sufficient resources or expertise to utilize it.

The APTI officer stated that he never received any indication that the Alaska State Office was not happy with APTI's final product. Further, he advised that APTI has never been asked by Alaska State Office personnel or anyone else not to use this project as a reference.

Note: Shortly after our interview with the APTI officer, APTI provided the final copies of its work product to the Alaska State Office.

The APTI officer also verified the BLM geographic sciences coordinator's assertion that it was he (the BLM geographic sciences coordinator) who had suggested that BLM would be interested in testing the merging of hyperspectral and Lidar imagery. The APTI officer further related that APTI had not previously performed Lidar imaging. In this contract, as well as future DOI contracts, APTI had to hire other companies to collect the Lidar images. APTI, however, did develop and utilize algorithms, which merged these two imaging technologies.

An APTI contracting official was interviewed regarding this contract. He acknowledged that to perform this contract, APTI had to subcontract the Lidar portion of the Alaska project to a company called 3001, Inc.

We also interviewed a former remote sensing expert for BLM. He was familiar with the Alaska project. However, he never saw the final results of the Alaska project and believes it may not have been completed. He opined that there were not enough results for a final product. He acknowledged that he had not seen the contract and could not attest to exactly what the required deliverables were. However, he did recall that the project officer was upset that he did not get

data sets. This would have been consistent with what he had seen, i.e., a work in progress, but not a completed project.

Note: Several interviewees stated that they have heard this project referred to as the "extortion" contract, presumably because the project seemed to have been mandated from BLM headquarters. Further, the interviewees have heard the information obtained from this project referred to as "throw away data sets," indicating that the data would have little, if any, real value. No one interviewed, however, acknowledged that they personally used this terminology, and they could not specifically identify anyone who had. Several interviewees were aware that Mr. Griles had an association with APTI, and many believed, but did not have personal knowledge, that Mr. Griles was responsible for this contract being awarded.

A review of records and documents obtained from APTI revealed that on June 26, 2001, Mr. Griles sent a facsimile to APTI, attaching unpaid invoices for January, April, and May 2001. Included on this sheet was the following handwritten note: "[name removed], I still am not confirmed – could be any day maybe! Can you help caught up [sic] on these outstanding amounts so I can clear out & get paid! I think things are going very good for your company with BLM."

Mr. Griles said that when he stated, "I think things are going very good for your company and BLM," he was referring to APTI's Alaska project. He said that based on his feedback, the technology appeared to be working as planned. He said he was not aware of any problems with the Alaska contract.

BLM National Interagency Fire Center Contract

The BLM's National Interagency Fire Center (NIFC), Boise, Idaho, awarded the second contract to APTI on July 18, 2001, subsequent to briefings provided by APTI to both NIFC and the BLM Nevada State Office during the spring of 2001. After the briefings, the Nevada State Office solicited its field offices to develop a project(s) so that it could use APTI's services.

This contract was for collecting data to inventory noxious and invasive weeds in northern Nevada. A portion of the contract also included a pilot project for the National Science and Technology Center, Denver, Colorado, to attempt to identify coalbed methane seams in Colorado. NIFC funded these projects in the amount of $499,500. The NIFC Contracting Office awarded the contract to APTI under GSA's Multiple Awards Schedule.

Larry Hamilton, Director of NIFC, was interviewed regarding this contract. He stated that in March 2001, Mr. Griles called just a couple of days before his nomination was announced, advising Hamilton that he would no longer be involved with APTI. Hamilton said he was surprised by this phone call since he was not aware of a company called APTI. He was also unaware of any connection between NIFC and APTI and any connection between Mr. Griles and APTI. Hamilton advised that he informed his staff of this phone call. He stated that at this point, he learned from his staff that it had, in fact, known about APTI and Mr. Griles' previous affiliation with the company.

APTI subsequently provided a briefing at NIFC on March 27, 2001. Hamilton stated that he had to leave the APTI briefing after about 1 hour. He recalled that what he heard was interesting and seemed to have relevance to fire management. He recalled that APTI presented examples of remote sensing that it had done for BLM in Alaska. He thought APTI's technology seemed more refined than any technology he had previously seen. APTI representatives mentioned that this was recently declassified technology it had developed for the military.

Hamilton did not recall referring APTI to the BLM Nevada State Office but did recall that at the briefing there was some discussion about the Great Basin Restoration Initiative in Nevada. He opined that this might have been the context of how APTI's technology could be helpful to NIFC. Hamilton did recall having discussions with Timothy Murphy, the Deputy Director of NIFC, and an information technology officer for NIFC about checking on APTI's work in Alaska and about coordinating a project with APTI in Nevada. Hamilton added that he never received any negative feedback regarding APTI's previous work with BLM. He stated that, in fact, he has received positive feedback regarding the APTI projects, which were subsequently completed in Nevada.

Hamilton was aware that NIFC funded the Nevada project but was not familiar with the details or the amount awarded. From his perspective, even though NIFC provided the funds, it was a BLM Nevada State Office project. He explained that NIFC has a budget of approximately $600 million and is fairly flexible on assisting BLM state offices with fire-related projects. Hamilton was vaguely aware that the APTI project primarily involved mapping weeds and vegetation. However, he stated that noxious weeds are considered a significant fire management issue, and thus the use of NIFC funds for this project would be appropriate.

Hamilton recalled discussions indicating that the cost for this project would be thousands of dollars, not hundreds of thousands of dollars. He added that for projects like this, $500,000 is the maximum that can be approved at his level. When asked, he stated that he had no information to suggest that this, or any subsequent projects with APTI, was split up to stay under this dollar limit to avoid a BLM headquarters review.

Hamilton further stated that he had no communications with any senior BLM or DOI officials regarding APTI other than the aforementioned call from Mr. Griles. He stated that he did not consider the fact that Mr. Griles' name was associated with APTI to have had any influence whatsoever on the decision to do a project with APTI. He added that high-level government and political officials, including Members of Congress and various state officials, routinely contact NIFC. He emphasized that he would not succumb to political pressure and does not believe that his management staff would either.

When interviewed, Mr. Griles stated that he was aware that APTI had obtained an audience with NIFC to provide a briefing on its technology. He stated that he did not personally participate in this project. He believes that an NES, Inc. official coordinated this effort. While Mr. Griles did not recall making a phone call to Hamilton, he stated he would not dispute Hamilton's account. He opined that the purpose of such a phone call would have simply been a courtesy notification that he was no longer involved with APTI.

The NES, Inc. official, who joined NES, Inc., in June 2000 as a consultant and who is currently an officer of the company, was interviewed. He acknowledged that he took over the APTI account at National when Mr. Griles was nominated to be the DOI Deputy Secretary.

Previously, the NES, Inc. official had been employed as an assistant to a former Director of BLM. The NES, Inc. official said he had known Tim Murphy, Deputy Director of NIFC, from his previous employment with BLM. At the request of the APTI officer, the NES, Inc. official called Murphy and set up a meeting for APTI to brief NIFC on its technology. The NES, Inc. official also attended this meeting in Boise, Idaho, which he recalled occurred in early 2001. He could not recall if Mr. Griles had already been nominated for his current position; however, Mr. Griles was no longer involved with APTI at that time. The NES, Inc. official said that to his knowledge, Mr. Griles' name was not mentioned during this briefing. He believed that the APTI briefing led to at least one contract with BLM; however, he said he is not aware of any specific details of the contract(s).

Murphy was interviewed regarding this contract. He stated that someone – he believes a principal in APTI – had called NIFC, requesting an opportunity to provide a briefing on APTI's technology. Murphy returned the call and personally arranged for APTI to provide a briefing at NIFC in March of 2001. When asked, Murphy stated that he had not had any communication or correspondence with anyone from BLM or DOI regarding APTI. He denied that he had received any pressure or influence to approve projects with APTI.

Murphy stated that Hamilton had told him about the phone call from Mr. Griles. Apparently, Mr. Griles had told Hamilton that based on his nomination as Deputy Secretary, he would no longer be representing APTI. Murphy stated that prior to receiving the phone call, he was not aware that Mr. Griles represented APTI. Murphy claimed he did not know what precipitated Mr. Griles' phone call to Hamilton. He also insisted that he had never spoken to Mr. Griles and only knows him by name.

According to Murphy, the BLM attendees of this briefing all found the technology intriguing. There was a general consensus that the technology should be utilized, especially in the Great Basin area of Nevada. Murphy tasked an information technology officer of the NIFC's National Systems Development Unit to follow up on this. Murphy specifically recalled that the decision to do a project in Nevada was his idea and that it did not originate with APTI. Murphy referred APTI to a fire management officer at BLM's Nevada State Office.

Murphy recalled that he also contacted Robert Abbey, Director of the BLM Nevada State Office, concerning the potential of doing a project with APTI. Because the Nevada State Office expressed an interest, Murphy told them to make sure that the technology could actually be applied and was not just theoretical. He said the project was not to be for fire protection or prevention but to identify the effects of fire, especially concerning noxious and invasive weeds. He opined that vegetation management is a significant part of overall fire management.

Murphy recalled that the Nevada State Office had initially requested a larger project involving vast areas. However, the NIFC information technology officer told him that the cost for a large project would be in the millions of dollars. Murphy stated that since his funding

approval authority was capped at $500,000, he decided that any project would have to be under that amount. He informed the NIFC information technology officer of this decision and told him that it would be the responsibility of the Nevada State Office to determine a project that would be under that amount. Murphy denied that there was any effort to split projects for APTI in order to stay within his approval authority of $500,000 and to avoid involvement from a higher authority.

Abbey was also interviewed. He recalled that APTI had been referred to the Nevada State Office by NIFC and that APTI subsequently briefed him and his senior staff around April of 2001. He stated that he and the other attendees were impressed with the technology on which APTI briefed them. Abbey stated that his leadership team decided that its field managers should put together proposals of where and how to use this technology. Abbey added that it was his understanding that NIFC had offered to fund a pilot project with APTI.

The fire management officer of the BLM Nevada State Office was interviewed. He recalled that Murphy had called him about APTI. The fire management officer then contacted APTI and scheduled a briefing at a Nevada State Office leadership meeting in April of 2001. He stated that he was very enthusiastic about the potential that APTI technology might have for both fire suppression and rehabilitation. He added that he was particularly interested in doing a pilot project with APTI because Murphy had indicated that NIFC would provide the funding. He explained that he did not have adequate funding in his budget for such a project.

The information technology officer of NIFC's National Systems Development unit was interviewed regarding this contract. He also recalled attending the APTI briefing at NIFC in April 2001 and agreed that the APTI technology seemed to have a huge potential for assisting fire programs. Murphy tasked him with following up on developing a pilot project to assess the technology.

The NIFC information technology officer subsequently served as the NIFC project coordinator, and a fire management specialist from the Nevada State Office was his point of contact. The NIFC information technology officer reported that because APTI had mentioned that it had previously contracted with BLM in Alaska, he checked with the project officer in the Alaska State Office. According to the NIFC information technology officer, the project officer had more good than bad things to say about APTI. The NIFC information technology officer took this to mean that the technology was new and was still evolving but that it had very good potential. He said that the project officer told him that he (the project officer) would contract with APTI again.

Note: During our interview with the project officer, he denied that he had recommended APTI as a contractor to the NIFC information technology officer. He specifically stated that he told the NIFC information technology officer that the Alaska staff had to assist APTI with its work because APTI did not have any expertise with vegetation. The project officer added that at the time the NIFC information technology officer called, the Alaska State Office had still not received the final product due under the contract. [Sentence removed].

The NIFC information technology officer's file on this project contained his handwritten notes from the APTI briefing. These notes contain the following comments: "(Deputy Sec. of Interior)" and "Steve Griles (Deputy Sec. of Interior)." When asked, the NIFC information technology officer identified the notes as his but could neither recall making them nor was he aware of any significance associated with them. He denied that he had been influenced or pressured concerning this contract. He claimed that Mr. Griles' affiliation with APTI would not have had any influence on him.

BLM field managers in Nevada prepared a number of proposals, as requested by the Nevada State Office. Our review of correspondence from the field offices regarding the proposals reflects that they were responding to a request to develop "a project with APTI." In its review of the entire contract file, the GSA OIG stated that this correspondence noted above "casts doubt on whether the APTI work was done in response to actual and legitimate BLM requirements."

Interviews of BLM's Nevada field staff, including a field manager; a botanist; another field manager; a fire management officer; and a fire ecologist confirmed that they thought of their proposals as projects that would be performed by APTI.

The NIFC contracting officials responsible for the procurement function of this contract were both interviewed. They maintained that since APTI was on the GSA Multiple Award Schedule, their only requirement was to check at least three other contractors on that schedule. In their opinion, just because no other contractor on the schedule could perform the specific requirements (both hyperspectral imaging and Lidar) it did not mean that this was a sole-source contract. Therefore, they did not prepare a justification for other than fair and open competition (known as a JOFOC). The NIFC supervisory contracting officer stated that in his 20 years in government contracting, he has never prepared a JOFOC for a contract awarded from the GSA schedule.

The NIFC contracting officials did acknowledge that this particular procurement action was "rushed." They believed that the urgency was based on the need to accomplish the data collection portion of the contract while vegetation was still green. While there was internal pressure to quickly award the contract, they both denied that there was ever any pressure to award a contract only to APTI from any high-level DOI official or officials.

A GSA contracting officer was interviewed generally about GSA's Multiple Awards Schedule and specifically about this contract. He disagreed with the position of the NIFC contracting officials that a JOFOC was not required. While he agreed that GSA requirements for ordering from the GSA schedule are not clear on the issue of sole-source purchases, he argued that if no other contractor on the schedule was able to perform the contract requirements, merely checking the GSA schedule would not constitute a valid review to determine which contractor best met the user's needs. According to the GSA contracting officer, if no other contractor could perform the requirements, a contract could be awarded to APTI, but the contract file should have been documented with a JOFOC explaining any unique circumstances to help justify the contract.

The GSA contracting officer further pointed out that when placing orders against GSA schedules, if an SOW is required, requests for quotations should be sent to at least three contractors. This was not done in this case.

A BLM Headquarters Services manager was interviewed regarding this contract. He advised that if no other contractor appears to provide the needed service, it would be prudent to advertise the requirement in the *Business Commerce Daily* or on the internet at *www.fedbizops.gov*. The purpose of such an advertisement would be to find out if anyone else can do what is being requested as well as to find out if anyone else is interested in doing the work. He added that it was his understanding that this procurement action, while desirable, is not actually required when ordering from the GSA Schedule.

Note: The GSA contracting officer agrees with the BLM manager, Headquarters Services, on this point.

A review of this contract file noted a memorandum entitled "GSA Vendor Business Review," dated July 12, 2001. It purports to list contractors reviewed for compliance with the contract specification. The memorandum concludes that none of these contractors was capable of performing this contract.

Although no JOFOC was in the contract file, the NIFC information technology officer did prepare one that was found (unsigned) in his work file. During his interview, he acknowledged that he asked APTI to assist him in preparing this document by identifying the uniqueness of its technology.

E-mails between the NIFC information technology officer and the APTI contracting official on July 5 and July 6, 2001, reflect that the NIFC information technology officer asked for information that could be used to support APTI as the sole source. APTI then provided specific information about its technology that the NIFC information technology officer was able to use to prepare the unsigned JOFOC.

The APTI officer was asked if APTI had provided BLM with a sole-source justification for this contract. The APTI officer said that the NIFC information technology officer had asked him what made APTI different. In response, the APTI officer provided the NIFC information technology officer with general information, including details about the unique sensor APTI used. He stated that he was not aware that the NIFC information technology officer had subsequently used this information as the justification for a sole-source contract.

The GSA OIG's review of this portion of the contract file pointed out "documents suggest that the [independent government] estimate was shared with APTI, an unusual occurrence in contracting." The review further commented, "The documents . . . suggest that APTI may have put the government estimate together."

The contract file, in fact, contains a note by the NIFC contract specialist, dated July 13, 2001, which states that she suspected that APTI had actually prepared the government's cost estimate that the NIFC information technology officer provided that same date. The NIFC

contracting specialist's note reflects that the estimate was very detailed and that she believed that it contained more detailed information than she thought the NIFC information technology officer would know.

When interviewed, the NIFC contracting specialist stated that the government's estimate was an important document that was used to evaluate bids and that it would be improper for the vendor to be told the amount of the government estimate. She stated that depending on the nature of the contract, it was not necessarily improper to obtain information from the contractor to assist in preparing the government estimate. She cited soliciting general information about a contractor's rates or costs as examples of permissible interaction with a contractor. She noted that in this case it might be difficult to prepare a government estimate due to the unique nature of the combined hyperspectral and Lidar technologies. However, she acknowledged that it would be clearly improper to tell APTI the specific amount of funding available for the project.

During his interview, the NIFC contracting officer said that the contractor should not have been given the government's estimate. He agreed with the contracting specialist that it was permissible to check with the vendor to obtain general information about pricing. He cited asking APTI for its cost to set up an airplane or its cost per acre for imaging as allowable examples of obtaining general information. The NIFC contracting officer admitted that it was suspicious that APTI's bid was so close to the government's estimate. He thought that APTI's turn-around time on providing a quote was fast but not necessarily unusual.

Note: According to the contract file, NIFC information technology officer ostensibly prepared the government cost estimate of $500,000 for this contract on July 12, 2001. However, our investigation revealed that the request for a price quotation was provided to APTI on July 16, 2001; on the same day, APTI submitted a bid for this project for $499,500.

When interviewed, the NIFC information technology officer admitted that he told APTI that the budget for this project was $500,000 before he prepared the government's cost estimate. He stated that he essentially asked APTI what kind of project he could get for between $400,000 and $500,000. Once he had determined APTI's cost, he then developed the size of the project.

We discovered that almost 2 weeks before he submitted the project's cost estimate, the NIFC information technology officer, in a memorandum dated June 25, 2001, noted that APTI had provided a cost estimate of $485,000. Also, in an e-mail dated June 29, 2001, the BLM fire management specialist noted that APTI had provided a cost estimate of $485,000 for this project and that NIFC had provided $500,000 in funding.

During her interview, the BLM fire management specialist recalled that the NIFC information technology officer had told her that NIFC only had about $485,000 for this project. She also said that APTI provided information regarding the estimated costs for the product prior to the development of the government's estimate. According to the BLM fire management specialist, the Nevada State Office project actually had to be scaled down based on the cost information provided by APTI.

The APTI contracting official was also asked about the government's cost estimate. He recalled a discussion with the APTI officer about the scope of the project with a certain amount of money being mentioned. While he did not recall the $500,000 figure, he did recall speaking with the NIFC information technology officer about cost estimates for this project 2 to 3 weeks before the contract was actually awarded. He denied that he was provided a final government cost estimate prior to the contract awarding.

The NIFC information technology officer claimed that he personally prepared the initial draft SOW**.** The GSA OIG's review of this contract noted concerns with this SOW. It commented, "APTI seems to have had significant input into, or even to have drafted, the Statement of Work. This is irregular for government procurement. Statements of Work are typically drafted by the Government, as they are an expression of the Government's requirements."

The contract file contains another note by the NIFC contract specialist, dated July 12, 2001, that indicates she believed the SOW was actually prepared by APTI. The note reads, "Reviewed statement of work and made several changes to the language to try to give the document the appearance that it was prepared by the Government rather than the Contractor."

In an e-mail dated July 12, 2001, the NIFC contract specialist told the NIFC information technology officer that she had received the SOW and that she and the NIFC contracting officer "worked on it to make some statements a little more general by removing direct references to this specific Contractor." The edited SOW removing those references was attached to the e-mail and is the SOW ultimately found in the contract file.

When questioned about this, the NIFC contract specialist stated that the purpose of the SOW was to specify the government's requirements and therefore it is a document that should *only* be prepared by the government. However, she stated that, depending on the nature of the procurement, it is not necessarily improper for a vendor to assist in its preparation. The NIFC contract specialist ultimately acknowledged that this particular SOW appears to presuppose that APTI would receive the contract.

The NIFC contracting officer stated that program employees frequently talk with vendors before involving procurement employees. He opined that the NIFC information technology specialist had gotten information from APTI about its technology because NIFC was interested in it. He stated that in this case, APTI was not selected simply because someone wanted to contract with APTI but rather because APTI had a unique combination of hyperspectral imaging and Lidar and was the only vendor capable of delivering the desired product. He said that if someone else could have delivered the product, the procurement would have been competed. The NIFC contracting officer added that the contracting office routinely receives requests from users who want to engage a particular contractor. He stated that it is his job to determine whether a contract can be legally awarded to the user's preferred contractor.

The NIFC contracting officer stated that he had no knowledge about APTI's involvement in writing the SOW and stated he was not aware of the NIFC contract specialist's note. However, the NIFC contracting officer said that it is not uncommon for users to try to get the

contractor to write the SOW and that his office looks for this activity and tries to prevent it. He added that if his office suspected that APTI had prepared the SOW, it should not have contracted with them. The NIFC contracting officer said that a contractor should not prepare an SOW because it is a government document describing the government's needs. He added that while it is permissible to get information from a contractor to help clarify an SOW, this clarification normally occurs after the contract is actually awarded. The NIFC contracting officer denied having had any inappropriate contact with APTI prior to the awarding of this contract.

The NIFC information technology officer was questioned about the preparation of the SOW for this project. He admitted that he had discussed it in detail with APTI prior to commencing the procurement action.

Note: The resultant SOW appears to have been written so that only APTI could have performed the contract. For example, it mentions APTI's specific equipment, e.g., the Aurora Sensor TM, and also requires images at 1-meter resolution, requirements that only APTI could meet. Further, the contract file contains e-mails from the NIFC information technology officer on July 12, 2001, referring to the "APTI SOW."

The BLM fire management specialist was also questioned about the SOW, and she stated that she and the NIFC information technology officer had numerous conversations with APTI personnel prior to the awarding of this contract. She explained that this project was primarily a pilot to see if this type of technology could be applied to fire management programs. She said that since it was new technology, they needed to discuss its potential capabilities with APTI. She acknowledged that the information provided by APTI was then used in the SOW.

The APTI officer stated that he believes BLM or NIFC personnel put the SOW together. He insisted that APTI did not write it, but he did acknowledge it did "red line," or edit, the SOW, especially for technical errors.

Note: The two "unique" requirements listed in this SOW are 1-meter resolution and the merging of hyperspectral and Lidar technologies. Regarding the latter requirement, since APTI did not have Lidar capabilities, it had to subcontract this portion of the contract. There is no indication that any effort was made to notify other contractors who only performed one of these two technologies to offer them the opportunity to develop this "leading edge" merger of the two technologies.

Technical personnel at NIFC and BLM's Nevada State Office, including the NIFC information technology officer, the BLM fire management specialist, and the BLM fire management officer, supported the 1-meter resolution requirement of the contract. However, remote sensing experts at the U.S. Geological Survey (USGS) and the BLM's National Science and Technology Center questioned whether 1-meter resolution was a valid requirement and whether 1-meter resolution would be attainable. When interviewed, Dr. Charles Groat, Director, USGS, stated that although there is a lot of interest in hyperspectral imaging, it is still very experimental. He added that linking hyperspectral imaging with Lidar, as proposed by APTI, could be very exciting and useful. However, he added that it is not the practice of USGS to fund a company's research and development.

According to a geographic information sciences (GIS) specialist for USGS, 2- to 3-meter resolution is leading-edge technology. He said he does not think that 1-meter resolution has yet been achieved.

As earlier noted, this contract also included a pilot project to identify coalbed methane seams in Colorado. This portion of the contract was completed under the auspices of the National Science and Technology Center. Since there appeared to be no connection to fire management, we asked Murphy why his office had funded this portion ($30,000) of the contract. He responded that he was unaware that his office had provided this portion of the funding.

A National Science and Technology Center project officer was interviewed and stated the APTI pilot concerning coalbed methane was not successful. She further complained that despite her concerns, APTI used this project as an example of its successful endeavors. A former BLM remote sensing expert agreed with the National Science and Technology center project officer and participated in a conference call when she asked APTI not to advertise this portion of the contract as a successful endeavor.

When interviewed, the APTI officer disputed that the project was unsuccessful, and he said APTI continues to use it as a reference. According to the APTI officer, BLM simply lacks the expertise to properly interpret the data.

BLM Nevada State Office Contract

After the NIFC contract was awarded, but before the final deliverables were received, the BLM Nevada State Office decided that based upon "favorable" results,[6] it would pursue additional work with APTI.

On September 19, 2001, the Nevada State Office awarded a follow-on contract for $75,000 to assess and identify two additional species of weeds. This contract, like the preceding NIFC contract, was awarded under the GSA Multiple Awards Schedule. One week later, on September 27, 2001, this contract was amended to perform a fire behavior model at a cost of $499,000. The BLM Nevada State Office funded the first part of the contract for $75,000, and NIFC provided $499,000 for the fire behavior model portion.

Our investigation determined that after an APTI interim briefing, BLM's Nevada State Office Director Robert Abbey questioned his staff about further uses of the APTI technology. The BLM fire management specialist, the BLM fire management officer, and the BLM botanist all said they were impressed with the initial results reported by APTI. They agreed that continued use of the APTI technology could be useful. The BLM botanist suggested that additional plant species be identified from the data already collected. The Nevada State Office then agreed to provide the $75,000 funding for this effort. While this project involved further

[6] According to an interim briefing by APTI.

"ground-truthing"[7] efforts in the field, it did not actually require any additional over-flights to collect new images.

During his interview, Abbey recalled that he approved this project. However, he said it was his understanding that this project was for additional data collection. He stated he was not aware that the project would only provide a further assessment of data that had already been collected by APTI.

The e-mail we obtained disclosed that the BLM fire management specialist discussed the $499,000 fire behavior model project in the amendment with APTI well before the requisition for this work was prepared. When asked, she advised that she developed this as a potential project with APTI following the initial briefing in early 2001. However, at the time, there was not enough money to do this project, so it was temporarily postponed. In September 2001, however, NIFC provided the funding for this project. Once the funding was obtained, she coordinated with the BLM Nevada State Office's purchasing agent to include this project as an amendment to the APTI original follow-on contract.

This contract was very similar to the original NIFC contract. In addition, it was awarded from the GSA schedule. In fact, when interviewed, the BLM purchasing agent's first remarks were that there is no easier contracting effort than using the GSA schedule. The BLM purchasing agent also acknowledged that she relied on the BLM fire management specialist and others to get this contract in place by the end of the year. It was her understanding that the funding provided from NIFC was year-end money that needed to be expended by the end of September. The BLM purchasing agent was asked about the modification and asserted that the general scope of the amendment was consistent with the original contract because it dealt with the same general technology.

Note: Although this contract was also rushed, the urgency this time appears to have been based on year-end funding because the actual remote sensing was not performed until June of 2002. No one interviewed has been able to justify why these contract requirements could not have been postponed other than the "need" to expend the money.

GSA OIG's review of this contract noted "Unexplained Significant Modifications." Further, it noted that the contract was only for additional review and assessment of data already collected during the previous contract. The amendment required APTI to fly over a totally different area and collect data for an entirely different purpose, i.e., a fire behavior model versus plant identification. The work required in the amendment was not only different, but the substantial increase in cost seems to support the theory that the amendment may have been used to circumvent proper procurement practices.

A BLM Headquarters Services manager was apprised of these findings and asked about the propriety of the amendment. He stated that "never in a million years" should this have been an amendment; it should have been a totally separate contract or delivery order.

[7] The process of verifying aerial photography with a specific piece of land.

We recovered an e-mail dated September 17, 2001, in which the BLM fire management specialist asked the APTI officer if he had the sole-source justification from the previous contract. The APTI officer replied by e-mail on the same date, attaching a copy of a JOFOC, dated July 10, 2001, and a 1-page write-up on APTI's unique capabilities. On September 18, 2001, the BLM fire management specialist provided said JOFOC pertaining to the initial contract ($75,000) to the BLM purchasing agent.[8] The JOFOC in the contract file is identical to the one provided to the BLM fire management specialist by the APTI officer, except that it is dated September 18, 2001. While both the BLM fire management specialist and the APTI officer deny that APTI wrote the justification, these e-mails suggest that if APTI did not write it, it clearly had substantial involvement in its preparation.

Note: The justification to use APTI was again based on the two same "unique" requirements (1-meter resolution and the merging of hyperspectral and Lidar technologies) referred to in the previous NIFC contract. The GSA OIG's review noted, "We do not believe there is an adequate explanation in the files as to why APTI's specific technology is required by BLM."

The GSA OIG's review also questioned the SOW for this contract, commenting, "APTI's name is actually included in the as yet unissued draft SOW. This suggests BLM had APTI in mind when drafting the SOW or that APTI drafted the statement."

The initial draft SOW for the identification of additional plant species is similar to the one that the NIFC information technology officer had initially provided on the previous NIFC contract before the NIFC contract specialist edited it. The draft specifically addressed that APTI would be performing the project. It also identified the unique requirements that only APTI could accomplish, i.e., the use of the Aurora TM sensor and 1-meter resolution. In this case, however, the SOW was not "cleaned up" by the contracting office, and the final SOW retains the very language that the NIFC contract specialist previously thought was improper.

The GSA OIG also pointed out that "task order files … contain printouts from GSA Advantage E-Schedules library [the online listing of Multiple Award Schedule (MAS) vendors], which lists other MAS vendors under the engineering and professional services schedule. There is no evidence, however, that BLM solicited any quotes from these vendors or shared the SOW with these vendors. Further, the printouts . . . (6/02) . . . appear to postdate award of these task orders."

The contract file contains several copied pages of GSA Schedule contractors, purporting to show efforts to identify competition. None of these documents, however, reflects price comparisons. The copied pages of the GSA Schedule reflect that they were printed in June 2002, several months after the award of this contract. When asked, the BLM purchasing agent could not explain this discrepancy.

[8] NIFC handled the previous contract with APTI in Nevada. The NIFC contracting officials maintain that a JOFOC is not required and did not prepare one for that contract. Nonetheless, the JOFOC that the APTI officer provided the BLM fire management specialist is identical to the JOFOC found in the NIFC information technology officer's file.

The GSA OIG further pointed out that the file contained a "procurement checklist," and the OIG stated, "This checklist notes the names of two other MAS [Multiple Award Schedule] vendors (Lockheed and Raytheon), cites their MAS contract numbers, and suggests that their price lists are attached. The pricelists, however, are not included in the file." The BLM purchasing agent was questioned about this discrepancy. She was unable to produce price lists from these two vendors and could not explain their absence.

On September 28, 2001, one day after the contract modification, APTI forwarded its proposal to perform the work and submitted its price of $499,033 for the fire behavior model portion of the contract. There was no proposal or cost estimate from APTI for the initial $75,000 contract.

Second BLM Nevada State Office Contract

The fourth contract was awarded on May 2, 2002, by the BLM Nevada State Office for a watershed assessment in both the Ely and Elko Nevada Districts. It was awarded prior to the completion of the NIFC contract and before the first Nevada State Office contract had begun. Nevada State Office personnel, including Abbey, the BLM fire management officer, and the BLM fire management specialist were asked if they thought it was unusual that another "pilot" project would be commenced before assessing the final products on the first two "pilot" projects. They stated that they relied on interim progress briefings and "quick look" products from the initial data collection efforts that were provided by APTI.

The BLM Nevada State Office had originally asked NIFC for $785,000 for this project, but NIFC could only provide $400,000 in funding. It appears that APTI was able to "piggy-back" the over-flight for this work with the flight from the fire behavior model contract. It is not clear whether this resulted in any real cost savings for BLM.

Our investigation revealed correspondence among the Nevada State Office (the BLM fire management specialist in particular), NIFC, and APTI regarding this contract that began as early as February 2002,[9] giving the appearance that APTI had been preselected.

For instance, on February 26, 2002, the BLM fire management specialist sent an e-mail to the APTI officer that forwarded a draft DOI Cohesive Strategy on Restoring Fire-Adapted Ecosystems on Federal Lands. In this e-mail, the BLM fire management specialist tells the APTI officer that she thinks that APTI could be the "mechanism to help develop the landscape/watershed assessments" issue of the strategy. APTI subsequently referred to this strategy when it developed its proposal for the watershed assessment.

Also, on February 26, 2002, the BLM fire management specialist sent an e-mail to Abbey and the BLM fire management officer using the subject header "Potential Projects for APTI." In it she recommended using APTI's technology to perform a watershed assessment in Nevada. She also refers to using APTI's technology in support of the aforementioned Cohesive Strategy.

[9] Investigation identified numerous e-mails between the BLM fire management specialist and the APTI officer. Some of the messages suggest that they had developed a personal relationship as well as professional.

On March 26, 2002, the APTI officer sent another e-mail to the BLM fire management officer and Murphy asking about the watershed assessment. In it, he said, "Hopefully you have received a copy of the Ely proposal to assess several watershed areas." He requested their "help to push this project forward." On March 27, 2002, the BLM fire management officer replied to the APTI officer and said that he would discuss it with the Ely District.

On March 27, 2002, the BLM fire management specialist forwarded to the APTI officer her first draft of the "Ely Proposal" for his review. While we were unable to locate the APTI officer's specific review, the BLM fire management specialist responded to it by saying she would "make it more direct."

Documents obtained from APTI for this project include an undated request for funding in the amount of $785,000 to NIFC from the Nevada State Office and an SOW for the watershed assessment, dated March 7, 2002. The SOW makes direct reference to APTI performing the work. Appendix B of this SOW shows a $785,000 budget estimate. When asked, the BLM fire management specialist acknowledged that this information was prepared by APTI. APTI incorrectly lists the NIFC contracting officer as the project's contracting officer and the NIFC information technology officer as the project coordinator, suggesting that APTI wrote the entire SOW.

On April 25, 2002, the APTI contracting official sent the BLM fire management specialist the above-noted SOW for this project. This SOW is identical to the SOW that the Nevada State Office had forwarded to NIFC previously. In response, by e-mail dated April 25, 2002, the BLM fire management specialist advised the APTI officer and the APTI contracting official that their draft SOW contained the wrong names. She explained to them that because NIFC contracting was not involved this time, the BLM purchasing agent would be the contracting officer, not the NIFC contracting officer, and that the NIFC information technology officer would not be involved. The BLM fire management specialist went on to ask them if they thought they needed to have an NIFC contact. She suggested that maybe they should, "due to political reasons."

On April 26, 2002, the BLM fire management specialist forwarded the SOW that she received from APTI to Ely District personnel requesting a quick turn-around time. She also sent a copy to Abbey and the BLM fire management officer, advising them that she thought, "we can pull this [project] off" and that she had "faith in [name removed]" to "work on this contract as she did before."

On April 29, 2002, the BLM fire management officer sent an e-mail to the BLM purchasing agent asking that she coordinate with APTI (APTI contracting official) to try to expedite the contract. The BLM fire management officer noted that APTI had contacted him and wanted to be able to coordinate the watershed assessment with the "existing project" – presumably the fire behavior model.

The watershed contract was ultimately awarded on May 2, 2002, for $400,000. The final SOW for this contract is dated April 30, 2002, and it still contains direct references about the work being performed by APTI.

The final SOW also contains a section entitled "Recommended Future Tasks," reflecting that APTI should be given a contract to provide follow-on training pertaining to its deliverables to BLM personnel. An e-mail between the BLM fire management specialist and the APTI officer on July 26, 2002, includes a draft SOW from APTI regarding this potential training project. The BLM fire management specialist also asked the APTI officer if $100,000 was enough to do an adequate job.

The BLM fire management officer, during his interview, stated that the Nevada State Office had in fact set aside money to fund proposed training by APTI. He believed that there was a total of $150,000 for this project. However, according to the BLM fire management officer, the training project was put "on hold" because of our investigation.

The contract file contains an e-mail message from the BLM purchasing agent to the BLM fire management specialist, dated May 2, 2002, requesting a government cost estimate. However, no cost estimate document was found during our investigation.

APTI's cost proposal for this project is dated May 1, 2002, the day after the final SOW is dated and the day before the contract was actually awarded. The APTI proposal lists a cost of $400,000, the exact amount of funding provided by NIFC.

The GSA OIG pointed out that the timing of the preparation of the SOW and APTI's proposal "is suspect." GSA noted that similar circumstances were prevalent in each of the APTI contracts and stated that "APTI's proposal was submitted and received the day of or the day after the SOW/RFQ [Request for Quotes] is issued."

The GSA OIG noted that this contract had discrepancies similar to the previous Nevada contract. It specifically noted that there was no evidence in the contract file that any substantive effort was made to identify other contractors or vendors. In addition, the contract file contained the identical printouts from GSA Advantage E-Schedules library, dated "6/02," as noted in the previous contract. The lists again appeared to have postdated the actual event. The BLM purchasing agent was asked about these discrepancies during her interview and again could not provide an explanation.

The GSA OIG further pointed out that this file contained the same "procurement checklist" as the previous contract. The checklist notes the names of two other Multiple Award Schedule (MAS) vendors (Lockheed and Raytheon), cites their MAS contract numbers, and suggests that their price lists are attached. The GSA OIG also stated that the price lists, however, are not included in the file. We questioned the BLM purchasing agent about this discrepancy, and again, she was unable to produce the price lists from these two vendors and could not explain their absence.

Note: While there is a JOFOC in the contract file, it only mentions APTI's capabilities and further contains a reference to APTI's "Bloodhound" technology. There is no mention of the merged technologies or the 1-meter resolution requirement, although they are cited in the SOW. As with the previous contracts, the GSA OIG found this JOFOC to be insufficient because a JOFOC is supposed to justify why unique capabilities are required.

BLM Oregon State Office Contract

The fifth contract was awarded on June 18, 2002, by the BLM Oregon Sate Office for remote sensing in the Cascade Siskiyou National Monument for $165,000.

Our investigation determined that this contract resulted after APTI solicited BLM headquarters and DOI Associate Deputy Secretary James Cason to include additional projects. APTI's premise for this work was that it could save BLM substantial money by avoiding installation and removal costs if other projects were found that could "piggyback" onto the Nevada contracts. APTI documents reflect that APTI provided additional briefings to BLM on February 22, and March 1, 2002.

A BLM geographic sciences coordinator was interviewed regarding these particular APTI briefings. He recalled that APTI provided at least one or two briefings to BLM headquarters personnel in Washington, D.C., on these dates. In fact, he personally coordinated a brown-bag meeting where APTI briefed BLM headquarters on the preliminary results of its work for BLM's Nevada office.

According to the BLM geographic sciences coordinator, at one of these briefings, APTI personnel "cornered" Bisson and Tipton and asked them where they could "go from here." The BLM geographic sciences coordinator said he took that to mean that APTI wanted to do more projects with BLM. Tipton subsequently asked the BLM geographic sciences coordinator about other projects that could be done with APTI. The BLM geographic sciences coordinator said that he suggested imaging a smaller administrative unit. He said he felt that a better project would be to look for weeds, fire fuels, recreational issues, and other issues that affected one area, rather than looking at an entire resource management plan.

The BLM geographic sciences coordinator stated that these new parameters led BLM to look at specific national monuments. He said they examined the Birds of Prey National Monument, the Steens Mountain National Monument, and the Cascade Siskiyou National Monument. The Cascade Siskiyou National Monument was then selected as a future project area. According to the BLM geographic sciences coordinator, the primary reason for this selection was because the monument represented a small geographical area. He said it was known that APTI was going to be flying to northern Nevada to collect images at the same time. He said he knew that APTI had been marketing an additional project with both Bisson and Tipton; however, the BLM geographic sciences coordinator said that he did not know which project came first – the selection of the Cascade Siskiyou National Monument or APTI asking for a project to be accomplished in conjunction with the Nevada work.

According to the BLM geographic sciences coordinator, APTI began contacting him shortly thereafter to see if another project had been selected. APTI mentioned that if a project could be developed in the northwest, APTI could tie it in with the contracts it was going to be doing in northern Nevada in May or June 2002. An e-mail exchange between the BLM geographic sciences coordinator and the APTI officer on March 26, 2002, refers to a project in "Steens/Siskiyou," and the APTI officer advises the BLM geographic sciences coordinator that he has the budgets worked up.

The BLM geographic sciences coordinator stated that in early May 2002, he and his supervisor, who is a BLM group manager for Planning Assessment and Community Support, received a phone call from Associate Deputy Secretary Cason. Cason told them that a lobbyist from APTI had called him

and explained that APTI needed an answer about doing another project. The BLM geographic sciences coordinator said Cason directed him and his supervisor to "take care of it." The BLM geographic sciences coordinator said he believed that Cason was telling them that another project should be developed so that APTI could do it in conjunction with the work in Nevada.

Note: Cason, at the time, had been designated by Mr. Griles to screen all matters from which he was recused.

When he was interviewed, the NES, Inc. official stated that he had attended an APTI briefing to BLM in early 2002 that primarily involved the BLM Planning Staff. He recalled that the BLM geographic sciences coordinator and his supervisor, Bisson, and Tipton were among the 10 or so BLM attendees. BLM was interested in using APTI's technology for assistance in completing its resource management plans for national monuments. He specifically recalled that the Cascade Siskiyou National Monument was mentioned. The NES, Inc. official, when asked, said that Mr. Griles did not attend this briefing.

The NES, Inc. official further stated that after this briefing, he had a few discussions with the BLM group manager about the possibility of expanding an existing APTI contract in Nevada to include work in the Cascade Siskiyou National Monument. He did not specifically recall any e-mail between him and the APTI officer regarding this issue, but he said he believes there was probably some form of communication about this matter. He said he believes BLM did, in fact, subsequently incorporate the Cascade Siskiyou work into the Nevada project.

The NES, Inc. official stated that he never contacted Cason regarding this issue, and furthermore, he stated that he does not know whether the APTI officer or the lobbyist from Chambers, Conlon, and Hartwell, Inc., contacted Cason. The NES, Inc. official explained that APTI had retained both himself and the lobbyist as consultants. While the NES, Inc. official did have some discussions with the lobbyist about APTI, he did not know everything that the lobbyist was doing for APTI.

The BLM group manager for Planning Assessment and Community Support was interviewed about this matter. She recalled that sometime in early 2002, she received a phone call from the NES, Inc. official, who was an APTI lobbyist at that time. The NES, Inc. official mentioned that APTI was currently performing a contract in Nevada. He suggested that if BLM developed another project in that area, it could save a lot of money because APTI already had its airplane set up to do the work. BLM would not have to incur the expense of setting up the equipment again.

The BLM group manager recalled that her office had discussed using APTI technology to assist in fire management programs, especially in northern California and southern Oregon. She could not recall if these discussions were the result of the NES, Inc. official's phone call or actual APTI briefings. She noted that she had attended one or two briefings that APTI provided to BLM about its technology.

The BLM group manager confirmed that sometime in early May 2002, she and the BLM geographic sciences coordinator received a phone call from Cason. Cason mentioned to them that a lobbyist from APTI had called him and explained that APTI needed an answer on whether or not BLM

was going to come up with another project so that it could be combined with the Nevada contract. She stated that Cason directed her to "take care of it."

However, the BLM group manager said she thought that Cason was merely telling them to take care of APTI's concern one way or the other, implying that BLM should decide to do a project or not and then inform APTI. According to the BLM group manager, when Cason called, he was, in her opinion, simply re-emphasizing that BLM could save money if it could find a follow-on contract for APTI. She opined that Cason was expressing a sense of urgency to this issue because there was a very short window of time to accomplish any follow-on work.

The BLM group manager said she did not think it was odd for senior DOI officials to come directly to her instead of calling or going through her chain of command. However, she said she could not recall any other time when that had occurred.

The BLM group manager stated that after her phone conversation with Cason, she called various fire management staffs, as well as the BLM Oregon office. She said the purpose of these calls was to discuss the need for APTI's services as well as convey the sense of urgency. Her discussions also included obtaining the necessary funding for the contract. The BLM group manager added that she had known that there was a previous interest for APTI's services in Oregon and California, so she did not believe that this was a case of headquarters pushing something on the field. The BLM group manager stated that she was able to find the funding for the project but did not recall the source.

Note: We determined that the $165,000 funding actually came from a variety of sources. NIFC provided $100,000, although we never established a connection to fire programs. The Oregon office provided $50,000, and the remaining $15,000 came from BLM headquarters, partly from the BLM Director's discretionary fund.

We interviewed Tipton regarding this contract. He recalled attending briefings by APTI in early 2002, but he did not recall APTI asking him about doing additional work with BLM at national monuments, such as the Cascade Siskiyou National Monument. He did remember that APTI had told him that it was going to be doing work for the BLM in Nevada and that it could save BLM money by adding other projects to this work. Tipton acknowledged that he might have tasked the BLM geographic sciences coordinator to check this out but claimed to have no specific recollection of doing so. Tipton claimed not to have any knowledge regarding the subsequent contract that BLM entered into with APTI in Oregon.

Tipton stated that he did not question the propriety of continuing to do pilot projects with APTI after Mr. Griles became Deputy Secretary of DOI. He said he viewed the continuing pilots as merely a continuation of the contract that had been in place before Mr. Griles became Deputy Secretary. Tipton said that after Mr. Griles' appointment, he never talked to him about contracts with APTI.

Bisson stated that he is not aware of any other contracts or projects that APTI has completed for BLM other than the Alaska contract. He had a vague recollection of attending another briefing by APTI but could not remember when it occurred. He also recalled speaking to

the BLM geographic sciences coordinator about APTI's technology; however, he has no recollection of any discussion regarding additional work with APTI at national monuments.

Bisson advised that while both the BLM group manager and the BLM geographic sciences coordinator worked for him while he served in Washington, D.C., he had no recollection of hearing about a call from Cason. Bisson stated that he could not imagine Cason trying to influence a contract for APTI. However, he also conceded that he thought it would be most unusual for someone at Cason's level to make contact directly with staff like the BLM group manager and the BLM geographic sciences coordinator, even to inquire about the status of an action. He could clearly understand why the staff might interpret such a call as an order to do a new project.

Another lobbyist for APTI was interviewed. He recalled that the APTI officer asked for his assistance in coordinating a BLM project in the Cascade Siskiyou National Monument. The APTI officer explained that APTI was going to be doing another project in Nevada and that if BLM decided to do a Cascade Siskiyou National Monument project, APTI could lower its cost because it would not have to install its equipment a second time. The APTI officer told the lobbyist for APTI that he had been working with the geographic sciences coordinator and his supervisor but had not received any response. The lobbyist for APTI stated that he called the BLM group manager, probably in early April 2002, about the national monument project. He was unable to speak to her directly and they exchanged voicemail messages.

The lobbyist for APTI stated that he was not certain if he contacted Cason regarding the Cascade Siskiyou National Monument project but thinks that he probably did. He said he does not specifically recall the conversation but said this is something he would typically do. The lobbyist for APTI explained that although he does not have a personal relationship with Cason, he does know him and has spoken with him in the past, which, he stated, is why he would typically contact him. The lobbyist for APTI said he did not and would not contact Mr. Griles on this or any similar matter. He said he is fully aware that Mr. Griles is recused from being involved with his former clients, so he knows it would be inappropriate for him to speak to the Deputy Secretary about these types of matters. The lobbyist for APTI said he knew about Mr. Griles' recusals because he has a personal relationship with him, and he said Mr. Griles has made it very clear that he cannot be involved with former clients.

We also interviewed the APTI officer regarding this contract. He stated that he was not aware that anyone higher than the BLM geographic sciences coordinator within BLM or DOI had been asked to launch the project at the Cascade Siskiyou National Monument. He did not specifically recall asking the lobbyist for APTI or any other lobbyist to intervene. However, in an e-mail dated May 23, 2002, the APTI officer told the lobbyist for APTI that APTI had been working with the BLM geographic sciences coordinator and his supervisor on a proposal in the Cascade Siskiyou National Monument for several months. In the e-mail, the APTI officer stated that he thought the proposal had stalled and asked if the lobbyist for APTI had any ideas. Also, in similar e-mails to the NES, Inc. official, dated April 29, May 2, and May 10, 2002, the APTI officer mentions this project and asks if there is any word from BLM. The APTI officer stated that he does not dispute that he sent the e-mails, but he said he has no specific recollection about them.

The APTI officer further stated that the issue of doing work in the national monuments was mentioned during a "brown bag" briefing he provided at BLM headquarters. He recalled that the BLM geographic sciences coordinator eventually told him that the Cascade Siskiyou National Monument looked like a better project than a number of other national monuments. The APTI officer subsequently wrote a "white paper" on a proposed project for the monument and provided it to the BLM geographic sciences coordinator. The APTI officer also provided cost estimates for this project directly to the BLM geographic sciences coordinator.

Associate Deputy Secretary Cason was interviewed, and he admitted he had received a phone call from a lobbyist from APTI requesting assistance. He said the lobbyist informed him that APTI had been working with BLM on doing a project in the Cascade Siskiyou National Monument for some time. Cason claimed that the purpose of the lobbyist's call was to alert him that since APTI was going to be doing work in the area anyway, going forward with the project could save BLM about $100,000 because it would not have to pay costs associated with setting up the equipment a second time. The lobbyist further explained to Cason that he had presented this information to the BLM geographic sciences coordinator and his supervisor but they had not yet resolved the issue. Cason said the lobbyist told him there was a small window of time – about 48 hours – to get the aircraft set up or the savings would be lost. According to Cason, the lobbyist was not pressing him to get the project approved but simply wanted to get an answer – one way or the other – within 48 hours. Cason could not recall when this phone call occurred.

Cason stated that he then called the BLM group manager and conveyed the APTI lobbyist's concerns. Cason advised that he did not suggest in any way that he wanted to ensure that the project for the monument would or should be approved. In fact, he added that he did not personally care whether or not this project happened. He simply asked the BLM geographic sciences coordinator and his supervisor to try to get either a "yes" or "no" answer soon as a matter of courtesy to APTI. Cason added that he would have made a similar call for other contractors under similar circumstances. Cason said that within a few hours, the BLM group manager called back and said that she had found the funding and that the project would be going forward. Cason claimed he did no further follow-up on this matter and added that he has never discussed this matter with Mr. Griles. He said to his knowledge, Mr. Griles is not aware of this project with APTI. Cason said he knew that APTI was a former client of the Deputy Secretary and that he was recused from any involvement with the company.

Cason acknowledged that, in retrospect, he could understand how the BLM geographic sciences coordinator and his supervisor might have perceived that his call was designed to solicit a positive response to do the project with APTI. He based this not on what he said but rather because of his position at DOI. He conceded that he probably should have initially contacted BLM Director Kathleen Clarke rather than the BLM geographic sciences coordinator and his supervisor. Cason said he did not have any relationship with either the BLM geographic sciences coordinator or his supervisor and does not know them personally.

Clarke was interviewed and acknowledged that she had a discretionary fund that could have been used for this contract. However, she stated that she does not have any personal knowledge that

her discretionary fund was used to help fund the Oregon project. Further, Clarke claimed that she was not even aware of the Oregon contract with APTI.

Following Cason's phone call, the BLM geographic sciences coordinator initiated a project for the Cascade Siskiyou National Monument. He requested "midyear" funding and began a series of electronic messages to the Oregon State Office about developing such a project.

Note: The same concerns about the other three contracts also exist for the BLM Oregon State Office contract. For instance, the contract was "rushed," APTI wrote and participated in the SOW, the project was determined by the amount of funding available, and it was sole sourced. Oregon BLM staff members have stated that they did not identify this "need" and they would not have recommended it. An assistant manager for the Cascade Siskiyou National Monument said he had been unsuccessful in obtaining about $30,000 to complete the resource plan, an action he and other Oregon staff thought should have had priority over any new "pilot" project.

On May 21, 2002, the BLM geographic sciences coordinator sent an e-mail requesting that the project be included for "midyear" funding in the amount of $250,000. The listed attachment is a proposal prepared by APTI. He acknowledged that APTI prepared the proposal for the project in the Cascade Siskiyou National Monument prior to his initiation of the request for funding and that he provided a copy of this proposal to Oregon. He also conceded that much of what APTI proposed was also included in the SOW.

In an e-mail dated May 22, 2002, a resources specialist with the BLM Oregon State Office advised the Oregon State Office that headquarters had selected a project with APTI in the Cascade Siskiyou National Monument. He proposed setting up a conference call with Washington, D.C.

In response to the BLM resources specialist's message, a program analyst for the BLM Oregon State Office sent an e-mail suggesting that the Medford District be included. The BLM program analyst added, "It will be ironic if we get a $250,000 study out of thin air and no funding from [the Washington, D.C., Office] to complete the plan itself." He stated that he was referring to the Cascade Siskiyou National Monument Resource Plan that was still pending.

On May 23, 2002, the assistant manager for the Cascade Siskiyou National Monument sent an e-mail to the BLM program analyst identifying possible uses for hyperspectral imaging at the monument.

On May 28, 2002, the BLM geographic sciences coordinator sent an e-mail to the Oregon staff advising them that he had spoken to the APTI officer about the project and that the cost would be decreased from $250,000 to $165,000.

That same day, the BLM resources specialist forwarded the assistant manager's e-mail to the BLM geographic sciences coordinator, and on June 3, 2002, the BLM geographic sciences coordinator forwarded this e-mail message to the APTI officer, which included the following caveat: "They are only one person's thoughts and do not represent an official statement of our requirements."

A former GIS specialist for the BLM Oregon State Office was interviewed. He stated that around the middle of April 2002, he received a phone call from the BLM geographic sciences coordinator. He said the BLM geographic sciences coordinator told him that he and the BLM group manager were getting a lot of pressure from the Department[10] to find a job for APTI. He said the BLM geographic sciences coordinator told him that APTI was currently under contract with the Nevada State Office and needed to find additional work that was nearby. The BLM geographic sciences coordinator wanted the former BLM GIS specialist's recommendation on whether they should do the Steens Mountain Range or the Cascade Siskiyou National Monument. The former BLM GIS specialist said the BLM geographic sciences coordinator told him that APTI was conducting imaging using a technology that merged hyperspectral and Lidar to identify and locate vegetation.

The former BLM GIS specialist said he had over 24 years of experience in the geospatial field and was aware that this was new and still unproven technology. He said he could not think of any need or value for this technology within the Oregon State Office and stated his opinion to the BLM geographic sciences coordinator. He said the BLM geographic sciences coordinator responded that it really did not matter and that he was being pressured to find work for APTI. The former BLM GIS specialist said the BLM geographic sciences coordinator never mentioned who was pressuring him.

The former BLM GIS specialist recalled that the BLM geographic sciences coordinator told him the approximate cost per acre for APTI's service. The former BLM GIS specialist said he believes he did some checking and made a return call to the BLM geographic sciences coordinator, advising him that to do the Steens would cost over $1 million and that to do the Cascade Siskiyou National Monument would cost about $250,000. He said the BLM geographic sciences coordinator replied that the million dollars was not going to happen and asked him if the Oregon State Office could fund this project. The former BLM GIS specialist said when he told him no, the BLM geographic sciences coordinator asked him to think about it. The former BLM GIS specialist said he replied that he not only did not have the money, he also didn't have the time to "go bowling for dollars."

The former BLM GIS specialist stated that in his opinion, this whole project was "ass backwards." He stated that in his entire 24 years of experience, he had never been involved in anything like it. He added that the normal way a project like this works is for the need or requirement to be developed first. He reiterated that the field had never requested this work, and it had not been identified as a potential future project.

The resources specialist for BLM Oregon was interviewed regarding this contract. He stated that he and the former BLM GIS specialist prepared the SOW for the contract. The BLM resources specialist said that he did not discuss the SOW with APTI.

The BLM resources specialist said that at the time, he considered this to be a legitimate test of APTI's technology. However, he also said that the contract was not done in the normal way, explaining that a project like this would usually go out for bid. The BLM resources specialist said it was his impression that BLM headquarters specifically wanted to contract with APTI to evaluate its technology. He said he has never been involved in a contract like this before. He recalled a procurement that he was involved in several years ago in which a bid was not considered for the

[10] The former BLM GIS specialist said he took this to mean DOI officials.

contract because it failed to qualify for some technical reason. He said that while he was not aware of any violation of procurement rules in this matter, he did have reservations about it.

The BLM resources specialist stated that the contract would not be beneficial to the Cascade Siskiyou National Monument Management Plan because the plan was essentially done. However, he said the data from the contract might be useful for monitoring purposes.

The BLM program analyst was interviewed and stated that he was not supportive of the project in Oregon, especially at the national monument, because he could not see any value in it. To his knowledge, this type of project was never identified by anyone within the BLM Oregon State Office. He said he recognized that, in theory, this technology could be useful for fire planning but his region is flown over on a regular basis; therefore, the region has a good understanding of both the vegetation and fire fuels present. He added that, in his opinion, it would be easier and less expensive to hire college students to go on site and collect the actual data, not just 1-meter resolution images. Because the Cascade Siskiyou National Monument is fairly open, it would be relatively easy to simply visit and see what is actually on the ground.

The BLM program analyst further explained that BLM has been charged with developing a rangeland study of the national monument. He said the Oregon State Office had been unsuccessful in getting funding for this project, and in his opinion, any funding received would have been more useful to the Oregon State Office than the APTI project. The BLM program analyst also stated that during discussions regarding this project, someone suggested that the project would be useful for the Cascade Siskiyou National Monument Resource Management Plan. He said he rejected this suggestion because the resource plan was almost completed.

The BLM program analyst added that during a conference call, he and Oregon State Office staff told the BLM geographic sciences coordinator that they questioned the practicality of this project because to be scientifically valid, it would need to be repeated. The BLM program analyst said it was apparent that this was very expensive technology and it seemed unlikely that the Oregon State Office would get funding for any future projects. He also recalled that during this call, the BLM assistant manager for the Cascade Siskiyou National Monument mentioned that there had been drought-like conditions and that the time might not be right to do this type of imaging. The BLM program analyst said the BLM geographic sciences coordinator replied that APTI was available "now" and that this project needed to be done "now."

A botanist for the BLM Oregon State Office was also interviewed and said the Oregon project came as a surprise to him. He stated that his office had neither planned nor requested it. He said he did not know where the project originated from, who approved it, and that it was made a top priority in the Medford District. In fact, he said he had to postpone other projects to work on it. He recalled that during staff discussions, all involved staff agreed that this project was being "pushed" on them.

A contracting officer for the BLM Oregon State Office was interviewed regarding this contract with APTI. He stated that he had participated in a conference call with the BLM geographic sciences coordinator on June 6, 2002, and recalled that the field guys "sort of jumped on" the BLM geographic sciences coordinator. He said they voiced concerns that BLM headquarters would not help fund their projects and now, suddenly, there was a requirement from headquarters that they had to help fund this

new project. Additionally, he said the field attendees believed that while the project might be helpful, there was no immediate need for it. They also thought it could be better planned and carried out if they waited until the next year.

The BLM contracting officer stated that he was also concerned about issuing a sole-source contract to APTI and said he thought it might be an abuse of authority. He added that this seemed to be an unfunded and unrequested project for which funding seemed to "just appear."

The BLM contracting officer contacted the BLM purchasing agent, who told him that she had contracted with APTI using the GSA Schedule. The BLM contracting officer said he was not sure that this was the correct procedure and that in his opinion, even under the GSA Schedule, the contract had to be compared against contractors who could provide similar products. He said if none are found, as was the case in this matter, a posting should be made in *fedbizops.gov*, announcing the intention to contract and identifying the product or service required to see if anyone else could provide it.[11] The BLM contracting officer said that according to BLM headquarters, or the BLM geographic sciences coordinator, there simply was not enough time to do this.

The BLM contracting officer added that since he wasn't sure he wanted to enter into this contract because it might be inappropriate, he discussed the issue with the BLM geographic sciences coordinator. The BLM contracting officer said the BLM geographic sciences coordinator responded, "It wouldn't look good if the state office did not accept this project." The BLM contracting officer said that while he did not let this comment drive his decision to go ahead, it did emphasize to him the importance that BLM headquarters was placing on the project.

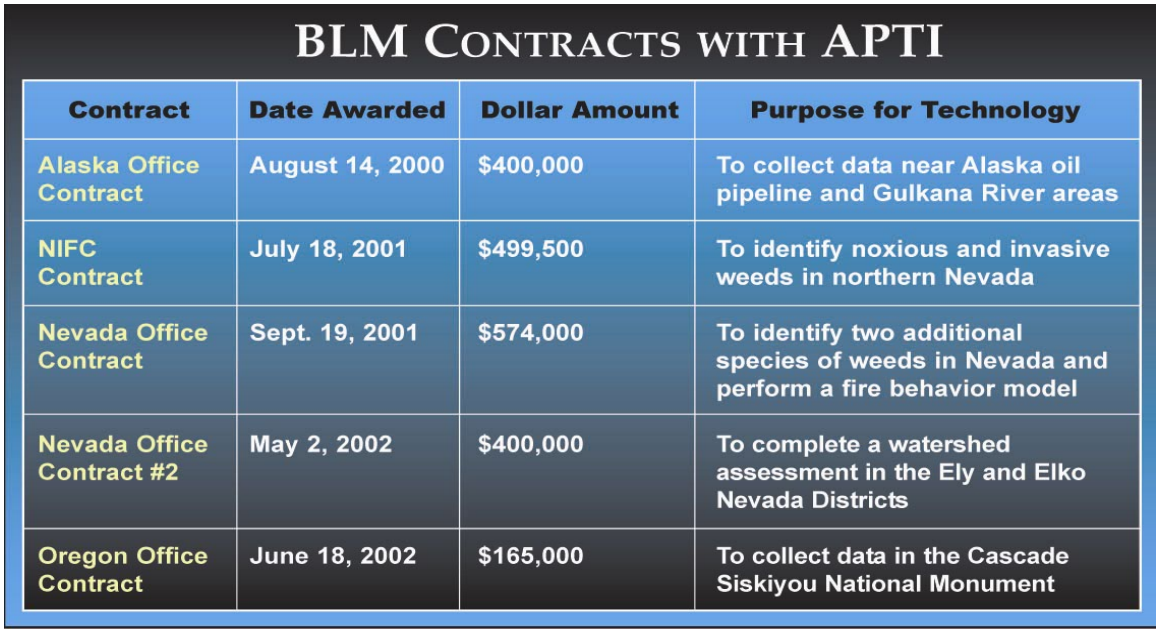
The BLM contracting officer was asked about the proposal that had been prepared by APTI, which resulted in the appearance that the proposal had already identified the Cascade Siskiyou National Monument and that APTI was familiar with BLM's plans. He responded that BLM headquarters would know about the various projects and where it would most likely require the technology that APTI was providing. He deduced that BLM headquarters had already discussed the national monument with APTI and had made the decision to perform the work there. He said he could not believe that BLM headquarters would simply provide funding and then tell the field to go "find a project."

The BLM contracting officer stated that while he never felt threatened or intimidated into entering into this contract, he opined that BLM headquarters had exerted undue influence by identifying both the amount of funding and the contractor.

The BLM contracting officer acknowledged that he had a number of conversations with APTI personnel prior to the awarding of this contract, particularly his concerns about the contract requirements and monitoring. He said that since headquarters had already "selected" APTI, it caused him to be more of a negotiator.

[11] The BLM contracting officer's opinion is in contrast to the opinion of the BLM contracting staff. However, it is consistent with the GSA contracting officer and the manager of BLM Headquarters Services.

Figure 3



BLM Contracts with APTI

Contract	Date Awarded	Dollar Amount	Purpose for Technology
Alaska Office Contract	August 14, 2000	$400,000	To collect data near Alaska oil pipeline and Gulkana River areas
NIFC Contract	July 18, 2001	$499,500	To identify noxious and invasive weeds in northern Nevada
Nevada Office Contract	Sept. 19, 2001	$574,000	To identify two additional species of weeds in Nevada and perform a fire behavior model
Nevada Office Contract #2	May 2, 2002	$400,000	To complete a watershed assessment in the Ely and Elko Nevada Districts
Oregon Office Contract	June 18, 2002	$165,000	To collect data in the Cascade Siskiyou National Monument

Figure 4

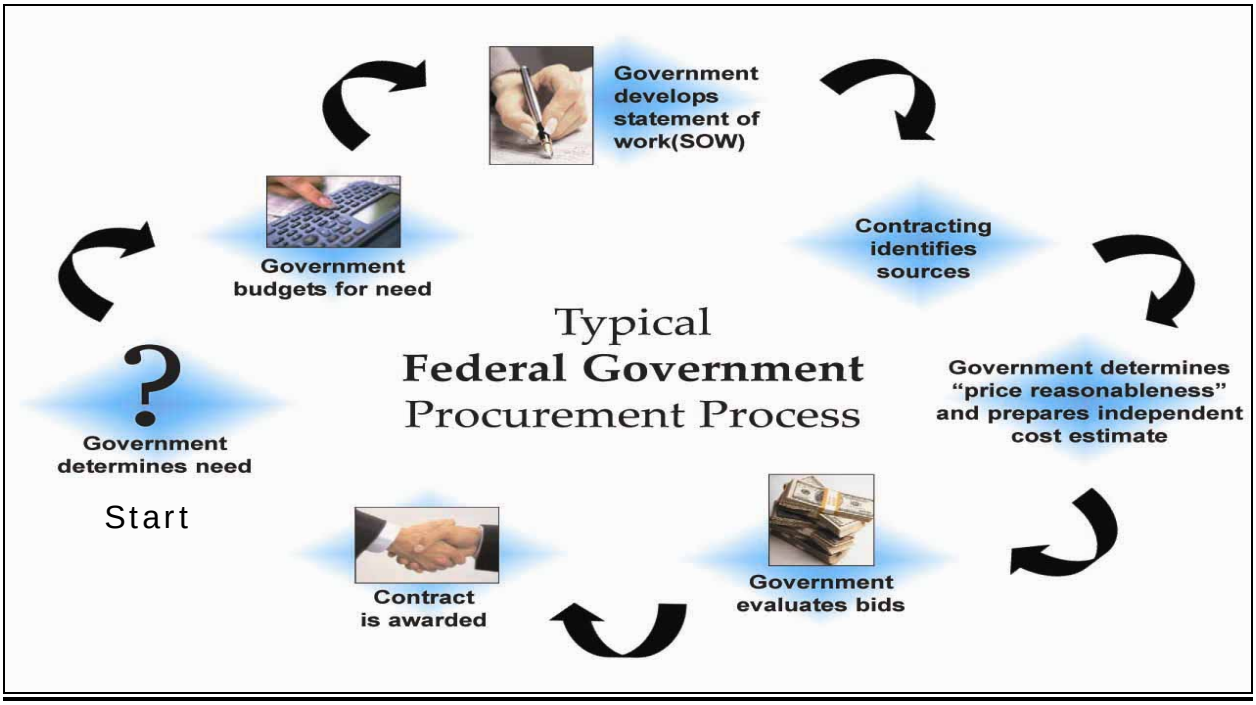
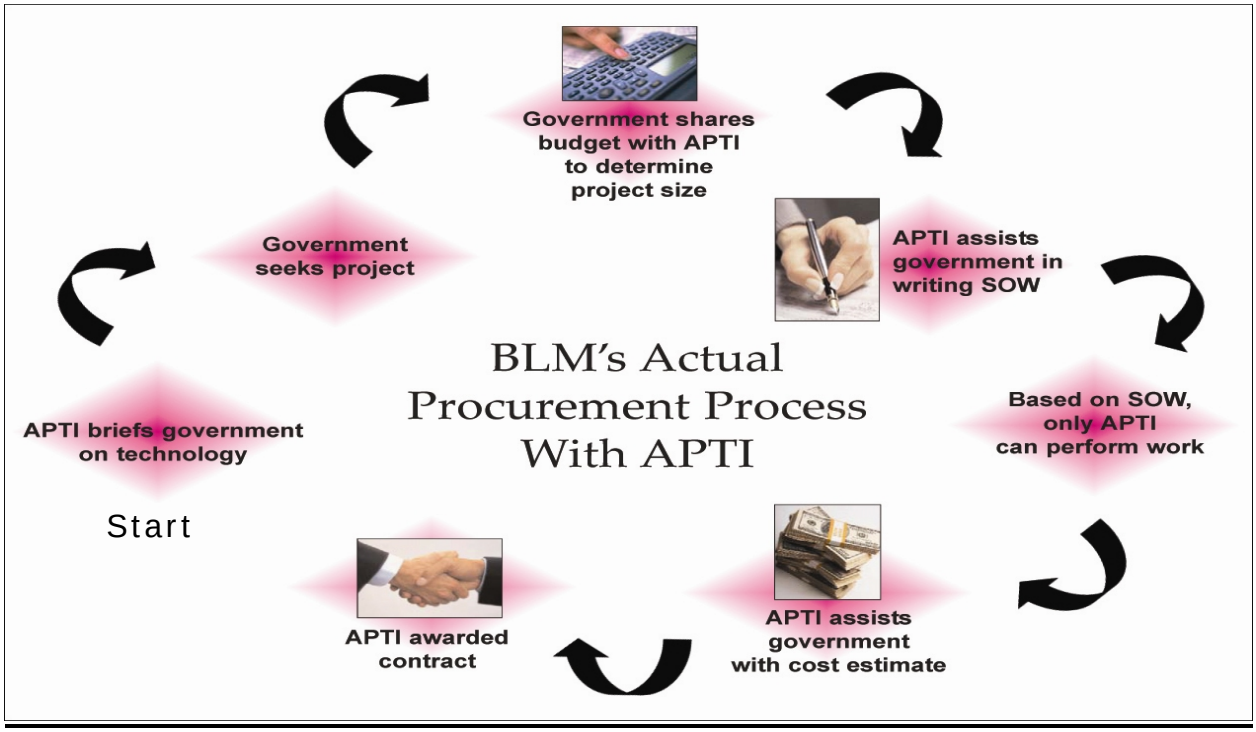


Figure 5



Other Related Findings

Our investigation also revealed that APTI was provided with a number of unusual opportunities to gain access to senior DOI officials. One noteworthy opportunity occurred on July 26, 2002, after the Oregon State contract was awarded. On this date, APTI provided a special briefing of its technology to a gathering of senior DOI officials. This briefing was predicated by a request from the lobbyist with Chambers, Conlon, and Hartwell, Inc., on behalf of APTI. The attendees were senior managers of several bureaus and offices. Cason coordinated the briefing, which was convened in the Deputy Secretary's outer conference room in his personal suite of offices at the Main Interior Building.

The following individuals attended the July 26, 2002 briefing:

- James Cason, DOI Associate Deputy Secretary
- Kathleen Clarke, Director, Bureau of Land Management
- James Hughes, Deputy Director, Bureau of Land Management
- Marshall Jones, Deputy Director, U.S. Fish and Wildlife Service
- Brian Waidmann, DOI Chief of Staff
- Jeffrey Jarrett, Director, Office of Surface Mining Reclamation and Enforcement
- Randy Jones, Deputy Director, National Park Service
- Timothy Hartzell, Director, Office of Wildland Fire Coordination
- Special Assistant to Deputy Secretary Griles
- Lobbyist for Chambers, Conlon and Hartwell, Inc.
- APTI Officer
- Policy analyst for the Bureau of Reclamation
- Former Assistant Secretary for Indian Affairs
- Former Acting Assistant Secretary for Indian Affairs

During his interview, Cason said he had received a second phone call from the APTI lobbyist. Cason said the lobbyist asked if he could assist in setting up a meeting so that APTI could present its capabilities and its technology's potential use by DOI to various bureaus and Department heads. Cason said the lobbyist told him that APTI had already been doing work involving this technology with BLM. Cason stated that he agreed to do so and he subsequently scheduled the meeting.

Cason said Mr. Griles neither participated in setting up this meeting nor did he attend. Cason acknowledged that he was aware of Mr. Griles' former involvement with APTI as a client. He thought about this involvement before scheduling the briefing but determined that since this was something that he would do himself, it would be appropriate. Cason recalled that the lobbyist and one or two APTI representatives gave the presentation. Cason claimed that virtually all of the attendees, including himself, were very impressed with the technology and there were general comments about its utility. Cason said that during the meeting, he had thought of a number of areas in which this technology might be useful. However, he said he refrained from commenting on these thoughts because he was aware that APTI was a former client of Mr. Griles, and he did not want it to appear as if he was recommending APTI one way or another.

Cason said that even though the meeting was held in Mr. Griles' conference room, it was "innocent" and there was no actual or implied involvement by the Deputy Secretary. Cason stated that there were a number of similar occasions when vendors made presentations in this very conference room. Specifically, he recalled that Oracle, the Logistics Management Institute, and Science Applications International Corporation had made presentations to upper-level DOI officials in this conference room.

When interviewed, the lobbyist said that at the request of APTI, he sent a letter to Cason asking for an opportunity for APTI to brief senior DOI staff on its capabilities. He explained that based on previous work with BLM, APTI thought it had put together a project that might be useful to other DOI bureaus and offices. As a result of his request, Cason set up a meeting with APTI on July 26, 2002. The lobbyist and the APTI officer provided the briefing, which occurred in the conference room outside of Cason's office, and according to the lobbyist, it went very well. However, he said he is not aware of APTI's success in obtaining further work with DOI after this meeting. The lobbyist said the Deputy Secretary was not present at this meeting and he does not know whether or not he was even aware of the meeting.

During her interview, BLM Director Clarke recalled that she was very impressed with the presentation and afterward called Abbey and asked him if BLM had used this technology. Abbey told her that BLM had used the technology and that it was a great tool. Clarke stated that she was not aware that APTI had been a former client of Mr. Griles and said that other than the presentation in July, she has never met with or spoken to anyone at APTI. She was not even aware of the company prior to this meeting.

We interviewed Marshall Jones, Deputy Director, U.S. Fish and Wildlife Service (FWS). He stated that on the day of the presentation, he was informed that the Deputy Secretary's Office had called requiring his attendance at an 11 a.m. meeting in the Deputy Secretary's Conference Room. Upon his arrival, he was surprised to learn that a commercial vendor was providing a product briefing. Jones said he was impressed with the APTI briefing and passed its literature on to his staff for future consideration. He stated that although the presentation was not a "hard sell," he did feel uncomfortable with the location of the presentation in the Deputy Secretary's conference room and with the manner in which he was directed to attend. He said that as a career civil servant, he had never before experienced a similar situation.

Brian Waidmann, Secretary Norton's Chief of Staff, was interviewed regarding this meeting. Waidmann stated that Associate Deputy Secretary Cason had arranged this presentation and that he attended but departed prior to its conclusion. He said the presentation highlighted the capabilities of APTI's technology. He specifically mentioned the potential of this technology to support the Department's fire management program.

James Hughes, the Deputy Director of Programs and Policy for BLM, was interviewed regarding his attendance at this APTI presentation. Hughes recalled that after his appointment to his position at DOI in July of 2002, he became aware of APTI's interest in having an opportunity to brief BLM's managers on its technology. He said that before he had the opportunity to respond to this request, he found the July 26, 2002 presentation on his schedule. He said he

assumed that the briefing had been arranged by either Messrs. Griles or Cason because it was occurring in the Deputy Secretary's conference room. He claimed that he was unaware of any prior connection between APTI and Mr. Griles or any other official at DOI.

Hughes described APTI's briefing as routine and similar to other briefings he has attended at DOI since that occasion. However, when asked, he could only recall one other briefing, which was hosted by USGS, where a specific vendor's product had been promoted. However, he was unable to recall the specific product or vendor's name involved at the USGS briefing. Hughes further stated that he felt that the APTI presentation was appropriate because it allowed new employees at DOI, like himself, to become aware of new technologies and their usefulness to the Department.

Timothy Hartzell, Director of the Office of Wildland Fire Coordination, was interviewed concerning this matter. Hartzell recalled that he was contacted on the date of the briefing by Waidmann, Secretary Norton's Chief of Staff, who requested that he attend the briefing. Hartzell claimed that upon arriving at the briefing and reviewing the briefing material, he realized that he was familiar with the technology and APTI. Hartzell related that prior to being assigned to the fire program, he was involved in BLM's weed program and he recalled that APTI had been used by BLM for a weed study in Nevada. He claimed that he had forgotten about the project and was pleased to see the results.

Hartzell maintained that he attended the meeting at the request of Waidmann to examine the applicability of using remote sensing for the fire program. Hartzell said he was unaware of who had coordinated the briefing and its location. Hartzell said BLM and DOI are now using other technology, coupled with academic research, to measure vegetation and fire threats.

Mr. Griles insisted that he was not aware of APTI's briefing to senior DOI officials in his conference room. He denied that Cason, or anyone else, discussed it with him. Mr. Griles added that he did recall seeing APTI personnel in his conference room, and when he asked his special assistant about their presence, she responded, "You don't need to know."

During our investigation, we learned that the Deputy Secretary's special assistant prepared a memorandum to Waidmann, asking him for a point of contact within the Bureau of Indian Affairs (BIA) for APTI. Waidmann returned the memorandum to her with a note advising that this request was inappropriate based on Mr. Griles' recusal, and he did not respond to her request. Like Cason, the Deputy Secretary's special assistant was charged with screening all matters from which Mr. Griles was recused.

The Deputy Secretary's special assistant said she had prepared the memorandum in response to a phone call she had received from the lobbyist. The lobbyist told her that APTI was going to be doing work near the Pyramid Lake area and thought that BIA might have an interest in the company's technology. The Deputy Secretary's special assistant recalled that at the APTI briefing in July, Waidmann seemed to be very interested in APTI's technology, and she said that is why she sent the note to him.

The Deputy Secretary's special assistant stated that she first reported for duty at DOI on August 1, 2001. Previously, she had worked for National as an executive assistant to Mr. Griles. Although she did not execute any written recusals, her previous employment with National restricted her involvement with them for 1 year after taking her position with DOI. Although the memorandum she prepared for Waidmann was not dated, our investigation determined that it was prepared on or about August 13, 2002, which is outside of her 1-year recusal period.

The Deputy Secretary's special assistant stated that after she received Waidmann's reply, she referred the issue to Shayla Simmons, Director of the DOI Office of Ethics, for review. Simmons agreed with Waidmann that it would be inappropriate for the Deputy Secretary's special assistant or Waidmann to respond to APTI's request. Consequently, the Deputy Secretary's special assistant called the lobbyist and told him that she could not get involved in this matter and that he would have to contact BIA directly. The Deputy Secretary's special assistant added that shortly after this incident, all screening duties for Mr. Griles were reassigned to Sue Ellen Wooldridge, Secretary Norton's Deputy Chief of Staff.

The lobbyist acknowledged that he had made a phone call to the Deputy Secretary's special assistant similar to his phone call to Cason. APTI had been discussing the possibility of doing a project for the BIA at Pyramid Lake in Nevada. Apparently, APTI again had a short window of time to make the arrangements. While he said he does not recall the exact conversation he had with her, the lobbyist said he knew that he passed this information to the Deputy Secretary's special assistant. He said he had contacted her because he had known her from her previous employment with National. He said he is not sure, but he thinks he may have tried to contact Cason first but that Cason was not available. The lobbyist said he was unaware of any results from his phone call to the Deputy Secretary's special assistant.

Cason, when interviewed, was shown a copy of the memorandum that the Deputy Secretary's special assistant prepared asking Waidmann for assistance in finding a point of contact for APTI. He said he was not aware of this memorandum and could not recall ever seeing it before.

Mr. Griles, when interviewed, stated that he had never seen the memorandum the Deputy Secretary's special assistant sent to Waidmann. He further stated that she did not tell him about the lobbyist's phone call or about the lobbyist's request for a contact with BIA.

We learned during our investigation that BLM and USGS have recently initiated a research project, which is being completed by a contractor, to explore the possible uses of hyperspectral imaging in fire management plans. After BLM and USGS described their needs in an SOW, they sent requests for proposals to several contractors that specialize in hyperspectral imaging. A contract was subsequently awarded to HyVista Corporation of Australia for the acquisition of hyperspectral imagery of an approximately 8-kilometer square area in Wyoming. The contract cost for acquiring this data, including airplane flight time, was $20,000.

Note: A GIS specialist recalled that he had discussed this project with APTI; however, it did not submit a bid.

A fire management specialist for BLM's National Science and Technology Center, Remote Sensing and GIS Applications Branch, stated that she is working with the GIS specialist on this research project to evaluate the use of hyperspectral imagery to analyze the effect of prescribed burns.[12] She said the project involves using hyperspectral imagery to inventory vegetation and involving fire fuels and fire modeling. She stated that this project would be published in a peer reviewed scientific journal. The Joint Fire Science Program, an interagency program for applied fire research located at the NIFC, is funding this project.

A program manager for the NIFC Joint Fire Science Program said this research project had been selected from a number of proposals that had been received to do research in areas with fire management application. He had a vague recollection of attending a briefing by APTI at NIFC and remembered that he did not think that its technology had much applicability for fire management. He recalled asking APTI questions about its technology and was not satisfied that it could benefit the fire program. He said that he discouraged any follow-up with APTI by NIFC. However, he added that it was not uncommon for BLM or NIFC to bypass him on issues like this. His role is research, so if a particular project is considered operational, he would not necessarily be involved.

After learning about the nature of the APTI projects, the program manager for NIFC opined that calling them "operational" was a "smokescreen." He added that he knows several companies with good remote sensing capabilities. He said he would therefore question why APTI would be selected to do this type of work and why these projects had not been competed among these other companies.

[12] A fire started under controlled circumstances.

Investigation of April 15, 2002 Dinner Party

"April 15, 2002 Dinner Party" Names and Titles

Name	Title
Burton, Johnnie	Director, MMS
Cason, James	DOI Associate Deputy Secretary
Clarke, Kathleen	Director, BLM
Elliott, Timothy	DOI Deputy Associate Solicitor, Division of General Law
Gary, Arthur	DOI Alternate Agency Ethics Officer and Deputy Director of the DOI Ethics Office
Griles, J. Steven	DOI Deputy Secretary
Himmelstein, Marc	President, National Environmental Strategies
Jarrett, Jeffrey	Director, Office of Surface Mining Reclamation and Enforcement
Simmons, Shayla	DOI Designated Agency Ethics Officer and Director of the DOI Ethics Office
Watson, Rebecca	Assistant Secretary for Land and Minerals Management

April 15, 2002 Dinner Party

Background

Marc Himmelstein has been a personal friend of Mr. Griles for over 20 years. He was also Mr. Griles' business partner while the two worked as lobbyists at National and its two subsidiary companies. After Mr. Griles was appointed to his current political position, he sold his interests in all three companies to Himmelstein.

Today, Himmelstein represents a number of clients with a multitude of interests at the Department. For example, National represents six clients who collaborated with BLM to contract an Environmental Impact Statement (EIS) regarding coalbed methane development in the Powder River Basin.

OIG Investigation

While reviewing Mr. Griles' calendars at the outset of our investigation, we discovered a dinner party he attended that was hosted by Himmelstein for several high-level DOI officials on April 15, 2002. According to the calendar, Rebecca Watson, the Assistant Secretary for Land and Minerals Management, and her directors were scheduled to attend the event, including Kathleen Clarke, the Director BLM; Johnnie Burton, the Director of MMS; and Jeffrey Jarrett, the Director of the Office of Surface Mining Reclamation and Enforcement (OSM). The calendars also reflected that James Cason, DOI Associate Deputy Secretary, and Mr. Griles' special assistant were also scheduled to attend.

Note: We subsequently determined that Jarrett did not actually attend the dinner.

Mr. Griles, when we initially interviewed him regarding this matter, said he wanted to coordinate the dinner to acquaint newly appointed DOI officials with each other, particularly Assistant Secretary Watson and her directors, who were all relatively new to the Department. Mr. Griles said he asked Himmelstein to host the event at his house because he did not have an adequate place to host the party himself and he thought that having the dinner at a restaurant would be an inappropriate setting. He said he considered the dinner a purely social event and did not even consider that it might be inappropriate.

Watson stated that she attended the dinner party at Marc Himmelstein's house at the invitation of Mr. Griles. The dinner was described to her as a social event. She recalled that Mr. Griles had commented that the reason it was going to be held at Himmelstein's was so that the attendees could see his house. According to Watson, the other attendees were Griles, Clarke, Burton, and Mr. Griles' special assistant.

Watson stated that she was acquainted with Himmelstein. She had previously worked for Fidelity Exploration and Production Company, which had retained Himmelstein as a lobbyist. Watson said she also knew that Himmelstein was a former partner of the Deputy Secretary. Watson stated that she was uncomfortable about attending a dinner party at Himmelstein's house and that she believes it was improper for Mr. Griles to have had the event at this location. She

explained that, in her opinion, a party at a lobbyist's house could give the appearance of favoritism. However, she added that business was not discussed at the dinner party.

Burton stated that the Deputy Secretary had invited her to attend this dinner because he wanted to get the bureau directors together to meet each other. Burton recalled that Mr. Griles had mentioned that a restaurant would be too noisy for this type of get together and that his friend had offered his house. She further recalled that other DOI attendees were Griles, Watson, Clarke, and Mr. Griles' special assistant. She said she believes that Cason may have also attended, but she was not certain.

Burton stated that she had never previously met Himmelstein. She said Himmelstein prepared the dinner personally and that she was at his house for about 2 ½ to 3 hours. She said that at the dinner, she learned that Himmelstein was the Deputy Secretary's former business partner, but she did not know exactly the nature of the business. She said she was not aware that he is a lobbyist who had worked with DOI. She has since seen him at the Main Interior Building, but to her knowledge, her bureau had not conducted any business with him.

Clarke recalled that Mr. Griles had coordinated this dinner in order to get bureau directors together to meet each other. She recalled that other attendees included Griles, Watson, Burton, and Mr. Griles' special assistant. She said she did not think that Cason attended. Clarke said it was her understanding that the reason Himmelstein hosted the dinner was because the Deputy Secretary did not personally have a place for hosting such an event.

Clarke also said she knew that Himmelstein and the Deputy Secretary were former business partners and that Himmelstein's business involved DOI. She stated that she had met Himmelstein on at least one occasion before this dinner. She said she had also met with him on at least one occasion after the dinner. She related that none of her contacts with Himmelstein had involved either APTI or the development of coalbed methane in the Powder River Basin. She did recall that after the dinner, Watson commented to her that she had felt uncomfortable. Clarke stated, however, that she did not feel uncomfortable at the dinner.

Jarrett was asked about the dinner party with Mr. Griles on April 15, 2002. He was not aware of this dinner party. He checked his calendar and determined that he was out of town on April 15, 2001. No one interviewed recalls him being present at the dinner.

Cason also stated that he did not specifically recall this dinner party. However, he said he has been to Himmelstein's house on more than one occasion and he believes that he most likely did attend this party.

Note: Burton said Cason might have attended the dinner, and Mr. Griles' special assistant and Himmelstein said Cason did attend.

Himmelstein recalled that Mr. Griles had asked him if he could use his house for this function. According to Himmelstein, the other attendees were Griles, Watson, Clarke, Burton, Cason, and Mr. Griles' special assistant. Himmelstein said he hosted the dinner and cooked the meal. He asserted that no business was discussed and that Mr. Griles paid him $120 to reimburse the cost of the dinner.

According to Mr. Griles' special assistant, the dinner party attendees included Griles, Himmelstein, Watson, Clarke, Burton, Cason, and herself. Mr. Griles' special assistant helped coordinate this dinner. She was aware that Mr. Griles wanted to get these new employees together for a social function outside of the office so they could get to know each other. She said that since Mr. Griles did not have an adequate place to host this party and a restaurant would not be appropriate, the two of them discussed using Himmelstein's house. According to Mr. Griles' special assistant, the Deputy Secretary subsequently contacted Himmelstein, who agreed to host the dinner at his house.

Mr. Griles' special assistant stated that the dinner party was strictly social. She said Himmelstein actually prepared the meal and no business was discussed to the best of her knowledge. She recalled that it was a very light-hearted get-together.

During her interview, Mr. Griles' special assistant recalled that when she and Mr. Griles had discussed the propriety of having the dinner at Himmelstein's house, Mr. Griles decided that if he paid for the dinner, there would be no ethical problems. She understood that Mr. Griles had, in fact, paid Himmelstein $180 ($30 per person) as reimbursement for the dinner. It was her recollection that the Deputy Secretary wrote the check after having a discussion on ethics with Deputy Associate Solicitor Timothy Elliott.

Mr. Griles' special assistant recalled that sometime after the dinner party she had a conversation with Elliott. Elliott questioned her about this dinner party after Mr. Griles' calendars had been released under a Freedom of Information Request. Apparently, Elliott had reviewed the calendars personally and had discovered the dinner. Elliot also indicated to her that Watson had told him that she felt uncomfortable at the dinner party. Mr. Griles' special assistant stated that neither Watson nor anyone else had mentioned any problems with the dinner either before or during the event. She added that she did not then and does not now feel uncomfortable about having attended this dinner.

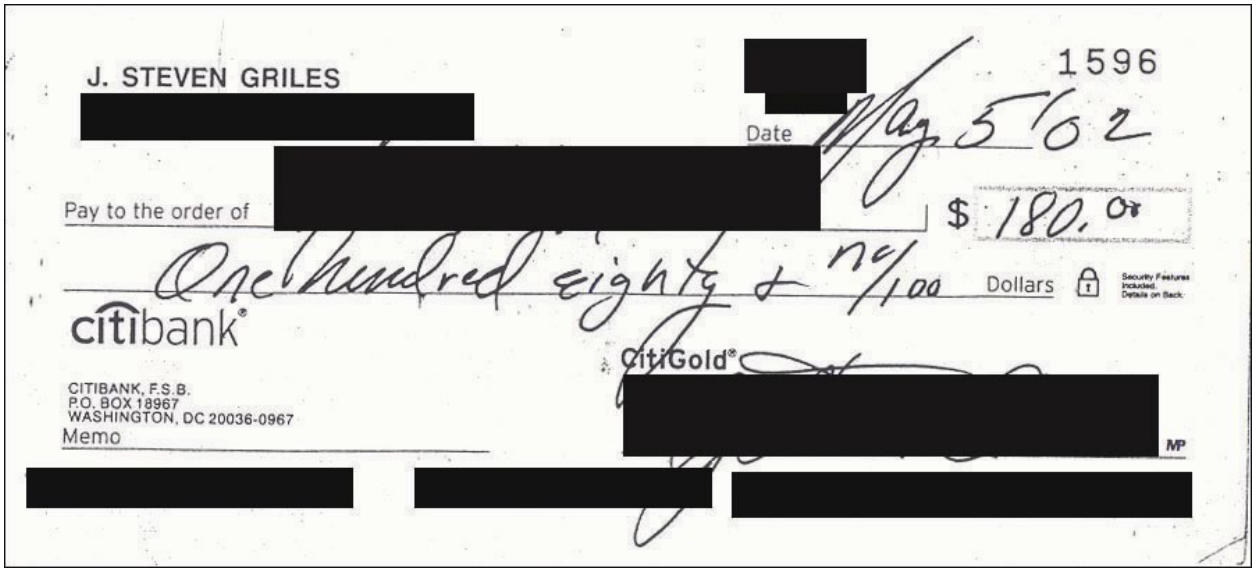
Mr. Griles' special assistant was also aware of at least one other instance when another issue related to dinner arose. She recalled that a representative from Western Gas Resources who is a friend and former business associate at National (see coalbed methane investigation, page 64), who was then doing business with DOI, was coming to Washington, D.C., and wanted to have dinner with Griles, Cason, herself, and perhaps Himmelstein. Mr. Griles' special assistant said she believes that this was after the April 15 dinner, perhaps in September or October of 2002. This time, when Mr. Griles' special assistant contacted Elliott for ethics advice, Elliott advised her against such a dinner because of the potential of an appearance issue. As a result, the planned dinner did not occur.

Mr. Griles, when initially interviewed, provided us with a copy of a personal check payable to Marc Himmelstein that he wrote to reimburse Himmelstein for the food. The check, number 1596, was dated May 5, 2002, nearly 3 weeks after the dinner party, as shown in **Figure 6**. It was in the amount of $180.00.[13] Mr. Griles could not recall if the matter of reimbursement

[13] As noted previously, Himmelstein said Griles paid him $120.

had come up before the dinner or whether it was after the dinner. He also did not recall having a conversation with Elliott about this check.[14]

Figure 6



Our investigation determined through an examination of Mr. Griles' bank records that the sequentially preceding check, number 1595, had a date of February 26, 2003, and that the check immediately following the check to Himmelstein, number 1597, had a date of February 3, 2003. When asked about this irregular sequence of checks, Mr. Griles stated that he must have simply grabbed a fresh book of checks from his office drawer that had started with check number 1596.

The following list illustrates the numbers of the checks written by Mr. Griles and their corresponding dates:

- ✓ **Check # 1595 – dated February 26, 2003**
- ✓ **Check # 1596 – dated May 5, 2002**
- ✓ **Check # 1597 – dated February 3, 2003**

Elliott stated that he became aware of this dinner after the fact. He could not recall the circumstances that led to him discovering it. He said he did recall conversing with Mr. Griles' special assistant about it and asking her who paid for the dinner. Elliott further recalled that Mr. Griles' special assistant commented, "If it's a problem, Steve will pay for it." Elliott stated that he had made a comment that it would look better if Mr. Griles paid for the dinner.

Elliott stated that although he did not provide advance guidance to Mr. Griles regarding the first dinner, he did speak with Mr. Griles' special assistant in advance on two other occasions

[14] The check was not cashed by Himmelstein until October 11, 2002, almost 6 months after the dinner party, after a series of media articles criticizing Mr. Griles' association with former business associates and clients first appeared and after our initial investigation started.

about hosting parties with Himmelstein. He advised against attending any of these dinner parties because Himmelstein was Mr. Griles' former business partner and the attendees would be departmental officials who might be in the position of having to subsequently do business with him. Elliott could not recall whether these two occasions were before or after the April 15, 2002 dinner party.

Shayla Simmons, the Director of the DOI Office of Ethics, and Arthur Gary, the Deputy Director, said they were unaware of the dinner party. However, they recalled an instance in which Mr. Griles sought advice about hosting a party with DOI officials and Himmelstein, which would have occurred after the first party. In that instance, they counseled Mr. Griles that such a dinner might give the appearance of a conflict of interest and should be avoided. When asked about the April 15, 2002 dinner party, they opined that this dinner gave the appearance of a conflict of interest.

When Mr. Griles was reinterviewed, he stated that he had in fact discussed the propriety of the dinner with his special assistant. He recalled that they both agreed that since the dinner was to be purely social, there would be no conflict with his recusals. They further decided that Mr. Griles should pay Himmelstein for the cost of the dinner party. Mr. Griles specifically recalled that he had told Himmelstein before the dinner that he "most definitely" was going to reimburse him for the cost.

Mr. Griles said that the delay of several weeks in writing the check was because it took that long for Himmelstein to provide him with the cost of the food. According to Mr. Griles, the amount that he paid Himmelstein, $180, was based on Himmelstein's actual cost. Further, the Deputy Secretary said that when he learned that Himmelstein had not cashed the check for several months, he contacted Himmelstein on several occasions urging him to cash the check. Mr. Griles said that he tried to explain to Himmelstein that he had to cash the check because he (Mr. Griles) needed documentation that he had paid for the dinner.

The Deputy Secretary emphatically told us that no one had ever expressed to him any thoughts or concerns that this dinner party might be inappropriate – either before, during, or after the event.

The Deputy Secretary reiterated that he never had a discussion with Elliott about this dinner and that he was not aware of any discussion between his special assistant and Elliott about the dinner. He added that he also was not aware of any discussions between his special assistant and Elliott about the propriety of any other dinners.

When Himmelstein was reinterviewed, he stated that the cost that Mr. Griles reimbursed him was based on the actual cost of the food. Himmelstein insisted that from the very inception of this dinner party, it was understood that Mr. Griles would reimburse him for the cost of the food. Himmelstein could only speculate that the reason that the Deputy Secretary did not write the check until several weeks after the dinner was because there was a delay in obtaining the actual cost. When asked, Himmelstein said that he did not recall Mr. Griles ever calling him and asking him to cash the check. Himmelstein recalled that he had simply misplaced the check on his desk and that when he discovered it, he cashed it.

Himmelstein also recalled Mr. Griles inviting him and the representative from Western Gas Resources to his house for dinner on a separate occasion. He said that on the afternoon of the scheduled event, he received a call that the dinner could not occur. He said he believed the reason for the cancellation was due to the perception of a conflict of interest. Himmelstein did not recall when this event occurred, but he said it happened after the representative for Western Gas Resources had left her position with National, which he thought was in about January 2002. He said he believes the dinner would have occurred after the April 15, 2002 dinner party.

Investigation of Coalbed Methane Allegations

"Coalbed Methane Allegations" Names and Titles

Name	Title
Burton, Johnnie	Director, MMS
Cason, James	DOI Associate Deputy Secretary
Clarke, Kathleen	Director, BLM
Elliott, Timothy	DOI Deputy Associate Solicitor, Division of General Law
Enzi, Michael	U.S. Senator (R-Wyoming)
Gary, Arthur	DOI Alternate Agency Ethics Officer and Deputy Director of the DOI Ethics Office
Griles, J. Steven	DOI Deputy Secretary
Hatfield, Nina	Acting Director, BLM
Himmelstein, Marc	President, National Environmental Strategies
Lass, Conrad	Chief of Staff for the Director of BLM
Norton, Gale	DOI Secretary
Simmons, Shayla	DOI Designated Agency Ethics Officer and Director of the DOI Ethics Office
Watson, Rebecca	Assistant Secretary, Land and Minerals Management
Wooldridge, Sue Ellen	DOI Deputy Chief of Staff

Coalbed Methane Allegations

Background

The Powder River Basin consists of over 8 million acres in Wyoming and Montana and contains vast reserves of coalbed methane – a gas used as fuel for heat as well as for transportation. In 1999 a number of oil and gas companies requested that BLM increase the number of drilling permits in this area to increase coalbed methane extraction. In order to increase extraction of the gas, however, an EIS is required. The purpose of an EIS is to identify and disclose potential environmental consequences and identify ways to mitigate negative effects on the environment.

Since the Powder River Basin resides in two states, an EIS was required for both. Montana Redstone Gas Partners, LLC, had hired J. Steven Griles and Associates, LLC, to assist in obtaining federal funding for the EIS in Montana. Mr. Griles successfully lobbied the U.S. Congress and secured the necessary funding for the EIS. A group of six other oil and gas companies in Wyoming elected to fund the EIS for their state privately. Three of these companies (Western Gas Resources, Yates Petroleum Corporation, and Devon Energy Corporation)**,** were former clients of J. Steven Griles and Associates, LLC. Mr. Griles did not personally represent these companies in this particular matter. However, after the Wyoming EIS process began and after Mr. Griles had become Deputy Secretary at DOI, five of the six companies became clients of Mr. Griles' former employer, National. Collectively, they have since become known as the Powder River Basin Natural Gas Coalition and use National's mailing address on their stationery.

In January and February of 2002, BLM released the EIS drafts for Wyoming and Montana, respectively, for public comment. The Environmental Protection Agency (EPA) reviewed the draft EIS report for Montana and declined to assign a rating due to a lack of sufficient information. EPA also reviewed the EIS for Wyoming and rated it as unsatisfactory due principally to the potential impact on irrigation water in the basin. However, before EPA issued this particular analysis, its contents were "leaked" to the media.

On April 12, 2002, Mr. Griles and the Deputy Assistant Secretary for Land and Minerals Management at that time drafted a memorandum to EPA with Mr. Griles' signature, challenging the release of EPA's analysis and voicing their concerns about a lack of communication between EPA and BLM. In the memorandum, Mr. Griles specifically refers to the coalbed methane EISs in Wyoming and Montana and states that the EPA's analysis "will create, at best, misimpressions and possibly impede the ability to move forward in a constructive manner." Additionally, on April 12, 2002, Mr. Griles telephoned the EPA Deputy Administrator, to whom the memorandum was sent, and further discussed the issue.

On May 25, 2002, *The Washington Post* reported that the Deputy Secretary had intervened in the EIS process in the Powder River Basin. The article highlighted the April 12 memorandum to EPA and Mr. Griles' previous representation of a number of the companies

involved in the development and extraction of coalbed methane in the basin. The article also suggested that Mr. Griles had violated his recusal from doing business with former clients.

On June 20, 2002, the Office of Government Ethics (OGE) voiced concern about the contents of the *Washington Post* article and asked in a written request that DOI's Ethics Office assess whether Mr. Griles violated any conflict-of-interest law, regulations regarding impartiality, or his ethics agreement. The DOI Ethics Office responded to OGE on September 10, 2002, concluding that no such violations had occurred. The Ethics Office based its conclusion on the content of Mr. Griles' letter to EPA, which, it stated, did not advocate for a particular outcome but merely intended "to encourage interagency cooperation."

Based on the facts presented by DOI's Ethics Office, OGE responded by letter on December 20, 2002, agreeing that the Deputy Secretary did not commit an act that affected his financial interest;[15] however, OGE opined that Mr. Griles' participation in matters involving recent employers or clients would be a violation of federal regulations. [16] While OGE stated that it still lacked "sufficient information to reach a conclusion," it said that regardless of the intent of the letter to EPA, Mr. Griles might still be participating in matters from which he had recused himself. OGE asked the Ethics Office to conduct further investigation of this matter. Since the Department's Ethics Office had neither the investigative staff nor the investigative authority to respond further to OGE, the Secretary then referred the matter to the OIG.

OIG Investigation

On January 21, 2003, Secretary Gale Norton requested that the OIG investigate the continuing concerns of OGE regarding Deputy Secretary Griles' involvement in the Powder River Basin matter.

During the course of this investigation, we interviewed over 40 individuals, some on multiple occasions. In addition, we reviewed hundreds of documents and conducted several financial analyses. Our investigation took us to numerous venues throughout the United States.

Mr. Griles' personal DOI ethics file contained a copy of his April 12, 2002 memorandum to EPA. The subject of the memorandum was "Proposed EPA Region 8 Letter on Coalbed Methane – EIS Prepared by the Department of the Interior – Wyoming and Montana." The memorandum stated that EPA was about to issue a finding that the EIS was unsatisfactory. In it, the Deputy Secretary asked for a cooperative effort between EPA and DOI in this matter to resolve issues of concern. He said he was concerned that the release of the EPA review might "possibly impede the ability to move forward in a constructive manner."

The DOI Ethics Office files also contained written communication between its office and OGE. In a letter dated June 20, 2002, OGE asked DOI's Ethics Office to investigate whether Mr. Griles violated either 18 U.S.C. § 208, Acts affecting a personal financial interest, or

[15] 18 U.S.C. § 208, Acts affecting a personal financial interest.
[16] 5 C.F.R. § 2635.502, Personal and business relationships.

5 C.F.R. § 2635.502, which prohibits participation in particular matters involving specific parties.

The Department's Ethics Office review of the matter concluded that no violations had occurred, and it reported this opinion to OGE by letters dated September 10, 2002, and November 29, 2002. The Ethics Office determined that 18 U.S.C. § 208 had not been violated since the ability or willingness of National to pay Mr. Griles according to their severance agreement was not impacted. The Ethics Office further argued that 5 C.F.R. § 2635.502 was not violated because the EIS process is akin to a rule-making procedure and therefore does not constitute a particular matter involving specific parties. The DOI Ethics Office also opined that the EIS process does not advocate for or against coalbed methane development and extraction by any individual entity.

OGE responded by letter dated December 20, 2002. While it agreed with DOI's Ethics Office that Mr. Griles had apparently not violated 18 U.S.C. § 208, based on the facts as presented, OGE did not concur with the Ethics Office's conclusion that the Deputy Secretary had not committed a conflict-of-interest violation. In fact, OGE's conclusion was that the "Coal bed methane project in its entirety is a particular matter involving specific parties."

OGE further argued that because several of these "specific parties" were alleged to be former clients of Mr. Griles and/or current clients of National, additional questions needed to be answered by DOI before an actual determination of a violation could be made. These questions fall into the following two broad categories:

(1) Of the companies holding Powder River Basin oil and gas permits with respect to coalbed methane development, which, if any, were former clients of the Deputy Secretary?

(2) Of the companies holding Powder River Basin oil and gas permits with respect to coalbed methane development, which, if any, were clients of National at the time of Mr. Griles' letter to EPA?

Note: As we proceeded with this investigation, we attempted to answer not only the additional questions posed by OGE, but we also attempted to conduct an independent assessment of the potential impact of these matters on Mr. Griles' severance agreement with National.

A review of Mr. Griles' official DOI ethics file revealed that on April 24, 2001, following his nomination as Deputy Secretary, he executed an ethics agreement describing the steps he would take to avoid either an actual or apparent conflict of interest. In the agreement, he recused himself "from participating personally and substantially … in any particular matter which would have a direct and predictable effect on National's ability or willingness to make the agreement payments." As noted earlier in this report, Mr. Griles continues to receive an annual $284,000 severance payment from National.

In this letter, Mr. Griles also agreed to recuse himself "from acting in any particular matter involving specific parties in which National is, or represents, a party. For 2 years after the

final payment is received [6/2007], I will not participate in any particular matter involving specific parties in which National is or represents a party, unless I receive a written waiver …."

Note: We did not find any written waivers in Mr. Griles' official ethics file.

The letter goes on to point out that "the term 'particular matter' may include matters not involving formal parties and may extend to legislation or policy-making which is narrowly focused on the interests of a descrete [sic] and identifiable class of persons …."

As previously noted, Mr. Griles has three written recusals, restricting his involvement with his former clients as well as the current clients of National. His April 12, 2002 memorandum to EPA therefore occurred during a time period when all three of the recusals were in effect.

To answer the additional questions posed by OGE, we reviewed Mr. Griles' ethics files, conducted numerous personal interviews, reviewed official lobbying reports filed with both the House of Representatives and the Senate, and reviewed countless documents including those provided under IG subpoena from National and other companies involved.

When we reviewed Part II of Schedule D, SF-278, in Mr. Griles' ethics file (Executive Branch Personnel Public Financial Disclosure Sheet) executed by Mr. Griles on April 24, 2001, we identified at least six of his former clients with interests in coalbed methane production in the Powder River Basin. Mr. Griles' representation of five of these clients specifically involved coalbed methane issues. His representation of the sixth client, ChevronTexaco Corporation (Chevron),[17] did not involve coalbed methane. These six clients and a description of Mr. Griles' duties for them, as annotated on his SF-278, are extracted below:

Note: Part II of Schedule D is entitled "Compensation in Excess of $5,000 Paid by One Source." Employees are required to "report sources of more than $5,000 compensation received by you or your business affiliation <u>for services provided directly by you</u> during any one year of the reporting period" (emphasis added).

1. **<u>Coalbed Methane Ad Hoc Committee</u>** – "general representation on CBM[18] issues with Administration and Congress."

2. **<u>Devon Energy Corporation</u>** – "general representation on CBM issues, securing additional funding for BLM to add personal [sic] for review of APD[19] and inspection on the ground."

3. **<u>Redstone Gas Partners, LLC</u>** – "represented company in securing funds for EIS on Coalbed methane development in Montana." [20]

[17] ChevronTexaco Corporation was formerly known as Chevron USA, Inc; hereafter, it will be referred to as Chevron.
[18] Coalbed Methane.
[19] Application for Permit to Drill.
[20] In April 2000, Redstone Gas Partners, LLC, was purchased by, and is now known as, Fidelity Exploration and Production Company.

4. **Western Gas Resources** – "general representation of CBM issues, passage of CBM legislation (S.2500); securing additional funding for BLM to add personal [sic] for review of APD's and inspection on the ground."

5. **Yates Petroleum Corporation** – "general representation in securing additional funding for BLM to add personal [sic] for review of APD's and inspection on the ground."[21]

6. **Chevron Corporation** – "expert witness USA ex re. J. Benjamin Johnson Jr., et al., v. Shell Oil Company, et al.; general representation of the merger of Texaco and Chevron."[22]

During this investigation, we verified that Devon Energy Corporation (Devon); Redstone Gas Partners, LLC; Western Gas Resources, Inc. (Western); Yates Petroleum Corporation (Yates); and Chevron are all permit holders for oil and gas exploration in the Wyoming portion of the Powder River Basin. We also determined that Redstone Gas Partners, LLC, and Yates hold permits for oil and gas exploration in the Montana portion of the basin.

Our investigation further determined that the Coalbed Methane Ad Hoc Committee was composed of virtually anyone who had an interest in the issue of ownership rights to coalbed methane in the Powder River Basin. The committee was funded by several hundred individual Wyoming landowners, as well as local businesses and numerous coalbed methane developers. The Coalbed Methane Ad Hoc Committee hired both Mr. Griles and Leon Podesta to lobby for them regarding Senate Bill 2500 to ensure that clear definitions and distinctions were made between gas and coal. The lobbying efforts were successful; the Senate Bill was passed; and in 2001, the Coalbed Methane Ad Hoc Committee was dissolved.

During our investigation, we also discovered a lobbying report filed by National regarding its representation of Devon. The report contains a comment that National's representation was for "securing funds for EIS." When he was interviewed, Deputy Secretary Griles said that while he had been the personal lobbyist for Devon, his representation never involved securing funds for an EIS. He said that Devon only had drilling permits in Wyoming – never in Montana – and that he had only lobbied for EIS funding for Montana. Mr. Griles explained that lobbying reports are often tentative and somewhat speculative, due to the requirements for filing them on a quarterly basis. He opined that this lobbying report was incorrectly prepared.

In addition to the six former clients listed above, we found that two subsidiary companies holding permits in the basin have parent companies that Mr. Griles personally represented. These subsidiaries, which were not noted on his SF-278, include:

[21] Although the description of duties does not specify coalbed methane, the language suggests that the representation does refer to coalbed methane. Further, Griles acknowledged that the representation about Applications for Permit to Drill (APDs) was for coalbed methane permits.

[22] The representation of Chevron did not involve coalbed methane or the Powder River Basin. Mr. Griles' relationship with Chevron is further discussed in the "Alleged Inappropriate Meetings" section of this report.

1. **Soncor Energy**[23]
2. **Lance Oil and Gas Company, Inc.**[24]

We also determined that the following six permit holders for oil and gas exploration in the Wyoming portion of the Powder River Basin were clients of National when Mr. Griles wrote his letter to EPA in April of 2002:

1. **Fidelity Exploration and Production Company**
2. **Western Gas Resources, Inc.**
3. **Devon Energy Corporation**
4. **Marathon/Pennaco**[25] **Oil Corporation**
5. **Williams Production RMT Company**
6. **Yates Petroleum Corporation**

After reviewing a listing of companies holding drilling permits in the Powder River Basin, we found that as of September 2002, more than half of the drilling permits in Wyoming and nearly all of the permits in Montana were owned by either former clients of the Deputy Secretary or former and current clients of National.

In February 2000, BLM and Lance Oil and Gas Company, Inc., et al, executed a "Memorandum of Understanding Regarding the Preparation of an Environmental Impact Statement for the Powder River Basin, Wyoming." Other signatories of the Memorandum of Understanding were Barrett Resources Corporation, Pennaco Energy, Inc., Devon Energy Corporation (Devon), Yates, and CMS Oil and Gas.[26]

The Memorandum of Understanding (MOU) identified a BLM field manager, Buffalo, Wyoming, as the BLM representative for this EIS. He, in turn, appointed a BLM program manager in his office as the BLM project officer. The representative of Western Gas Resources was identified in the MOU as the single point of contact for all six companies.

On July 24, 2000, the representative of Western Gas Resources awarded a contract to Greystone Environmental Consultants[27] to conduct the EIS. While the contract file shows that BLM was a participant in the award, BLM did not actually sign the contract. Under both the MOU and the contract, BLM retained overall responsibility for the performance of the EIS. The final decision as to recommended courses of action resulting from the EIS was also the sole responsibility of BLM.

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[23] A subsidiary of Sunoco, which is now a current client of National.

[24] A wholly owned subsidiary of Western Gas Resources, which was a former client of the Deputy Secretary and is a current client of National.

[25] Pennaco Energy, Inc., itself was not a client of either National or Mr. Griles; however, it was purchased by Marathon in March 2001, and permits in the Basin are still listed under its name.

[26] Lance Oil and Gas Company, Inc.; Devon; and Yates are all former personal clients of Mr. Griles. They are also current clients of National.

[27] Greystone Environmental Consulting is also a client of National; however, according to Himmelstein, Greystone did not become a client until after performing the EIS work in the Powder River Basin.

Marc Himmelstein, who is Mr. Griles' former partner and the president of National, stated that he was aware that Mr. Griles sent a letter to EPA on April 12, 2002, because of its attention in the media. However, he said he has never seen it, and he said that if he had discussed this matter with Mr. Griles, he would have told him, "Don't be stupid; you can't do that; don't put it in writing."

Himmelstein stated that National currently represents six oil and gas clients that have an interest in coalbed methane development in the Powder River Basin. Himmelstein recalled that Mr. Griles had initiated most of the business with these clients prior to going to DOI. However, Himmelstein initially claimed that Mr. Griles' business relationship with these clients did not involve coalbed methane issues. However, when he was reinterviewed later, Himmelstein stated that Mr. Griles' representation only involved lobbying BLM to hire additional personnel in order to assist with the processing of APDs. He acknowledged that these APDs pertained to coalbed methane.

Himmelstein acknowledged that he had filed a congressional lobbying report that lists Mr. Griles as a lobbyist for Devon. However, he claimed that he, personally, did not know what representation Mr. Griles had actually provided to Devon. Himmelstein explained that since the filing of lobbying forms with the Congress is complicated by "timing" issues, the report he filed may have been in error.

Himmelstein said he was aware that in early 2000, a number of National's clients interested in coalbed methane development had approached BLM with a proposal to increase development in the Wyoming portion of the Powder River Basin. Himmelstein said he was aware that an EIS was required and that it was ultimately funded by the interested companies. He was also aware that Greystone Environmental Consulting had been contracted to perform this EIS.

Himmelstein acknowledged that Greystone is a current client of National, and he said that Greystone became a client after completing the EIS work. Prior to Greystone working on the EIS, he claimed he was not familiar with the company. Himmelstein said he knew that the representative of Western Gas Resources was involved in the process that selected Greystone; however, he said he did not know the details of that selection process. He also acknowledged that sometime after Greystone's selection, in the spring of 2001, National hired the representative of Western Gas Resources. However, Himmelstein stated that the representative of Western Gas Resources left National after less than a year and returned to Western in February 2002. He acknowledged that Western is a current client of National.

We discovered a letter Himmelstein sent to the Chief of Staff and Associate Deputy Administrator, EPA, on July 15, 2002, under the letterhead of "Powder River Basin Natural Gas Coalition." The letter identified the "coalition" members as Devon; Fidelity Exploration and Production Comapany; Marathon Oil Corporation (Marathon); Western; Williams Production RMT Company (Williams); and Yates. In this letter, Himmelstein stressed the importance of the timely completion of the EISs and encouraged EPA to work with BLM to resolve any outstanding issues of concern. Although advocating for the Powder River Basin Natural Gas

Coalition, the address on the letterhead is the same as National – 2600 Virginia Ave., NW, Washington, D.C.

Himmelstein stated that there is actually no official coalition. He stated that the coalition is simply a group of clients who retained National to represent them in this matter after work on the EIS was underway. Himmelstein stated that he did not discuss his letter with the Deputy Secretary or anyone else at DOI. He denied that there was any effort to coordinate his letter with Mr. Griles' April 12, 2002 letter. He also asserted that his letter was mostly a "thank you" to the Chief of Staff and Associate Deputy Administrator, EPA, for taking the time to meet with him.

Himmelstein provided us with financial information regarding National's clients who are involved in coalbed methane development in the Powder River Basin. We then conducted a thorough analysis of this information.

Due to the proprietary nature of National's information, the results of our analysis are expressed in terms of percentage of gross income. For 2001, income derived from coalbed methane clients represented 6.25 percent of the gross income of National's revenue and 13.79 percent of the gross income of NES, Inc. For 2002, income derived from coalbed methane clients represented 7.18 percent of the gross income of National and 7.96 percent of the gross income of NES, Inc.

We note that the results of our review differ only slightly with the information reported to OGE by DOI's Ethics Office in a letter dated November 29, 2002. Specifically, that letter advises OGE that Mr. Griles' attorney had represented that "based on its [NES, Inc.'s] review of total receipts from 2001 and the first nine months of 2002, its billings relating to CBM development in the Basin represent less than one tenth of its gross income."

We interviewed the representative of Western Gas Resources, Denver, Colorado, regarding these matters. She stated that she first met Mr. Griles in late 1998, shortly after she went to work for Western. She said that Western had hired him to represent them on legislative and regulatory matters. She later became the primary point of contact at Western for Mr. Griles. According to her, Mr. Griles did not represent Western concerning the Powder River Basin in Wyoming, and she said she could not recall ever having a conversation with him about this subject.

The representative of Western Gas Resources said she knew that Western has been a part of the Coalbed Methane Coalition, which has an interest in coalbed methane development in Montana. However, she stated that since Western does not have any leases or permits in Montana, they were not involved in the EIS process there. She said Western was actually only interested in the development of coalbed methane in the Wyoming portion of the Powder River Basin. She said the six companies noted above entered into an arrangement to fund an EIS in Wyoming and she served as their point of contact for arranging and coordinating the EIS process.

The representative of Western Gas Resources further stated that in May 2001, she left her employment with Western and went to work for National as a consultant. In that capacity she

had several contacts with DOI, primarily with BLM. She acknowledged that Mr. Griles was instrumental in her move from Western to National. Shortly thereafter, however, Mr. Griles left National for his current position with DOI. The representative of Western Gas Resources stated that because she was aware of Mr. Griles' recusals, she has had no business contact with him since he became the DOI Deputy Secretary.

The representative of Western Gas Resources said she left National in February 2002 and returned to Western. She said that although the EIS process was still going on when she returned, she did not have any further involvement with it. She said that while she was aware that EPA had concerns about the EIS, she was not aware of any specific matters.

The representative of Western Gas Resources acknowledged that on April 11, 2002, she attended a meeting in Mr.Griles' office as a representative of Western, along with PIRA Energy Group and several other individuals. She stated that the meeting pertained to economic and supply forecasts of natural gas but that the EIS in Wyoming was not discussed. She reiterated that she has never discussed the EIS issue with Mr. Griles.

The BLM field manager, Buffalo, Wyoming, was interviewed regarding the Wyoming EIS. He stated that contracts to do EISs are often funded by private companies interested in development because BLM does not usually have the funding. He said that, in this instance, a number of oil and gas companies requested permission from BLM to expand their coalbed methane drilling operations in the Powder River Basin. Since BLM did not have the resources to do the required EIS in support of their request, the companies ultimately agreed to fund it themselves.

He said the requesting companies hired a contractor to perform the EIS and that BLM was responsible for actually approving the contractor and then administering the contract. The BLM field manager said that he was not personally involved in this matter because he had assigned project management duties to the BLM program manager on his staff.

The BLM field manager further stated that EPA was not initially a "cooperating agency" (a term the BLM field manager applied to interested entities involved in the process) on this project. In fact, he recalled that when EPA officials were initially asked to participate, they refused. However, his office has a liaison with EPA in Denver and he knows that EPA was kept informed of the EIS progress by the liaison.

The BLM field manager said he has known Mr. Griles professionally for several years. He does not believe that Mr. Griles was involved in the EIS process prior to his nomination as Deputy Secretary. While not positive of this fact, he stated that, to his knowledge, Mr. Griles has not been involved since his nomination and subsequent confirmation.

The BLM field manager stated that, in his opinion, there has been a lack of coordination between BLM and EPA. He believes, however, that the relationship between BLM and EPA has improved immensely since the new EPA Region 8 Administrator took office. He attributed this improvement to both the new EPA Region 8 Administrator and BLM Director Kathleen Clarke. The BLM field manager stated that he was not aware of Mr. Griles' April 12, 2002 letter to EPA.

The program manager of the BLM Buffalo, Wyoming, office was also interviewed. He corroborated the information provided by the BLM field manager. He said that after the companies requesting the expansion of coalbed methane development prepared and published a request for a proposal to do an EIS and then evaluated the EIS, they requested that BLM approve the selection of Greystone. BLM concurred with Greystone's selection, and the contract was awarded. The BLM program manager said Greystone has performed other EISs, including at least two others in Wyoming.

The BLM program manager said that in order to be approved, Greystone had to issue a statement indicating that it had no interest in coalbed methane development in the Powder River Basin. The BLM program manager said he provided a copy of this statement, dated July 24, 2000, which certified that, "…Greystone has no direct or indirect financial or other conflicting interest in the planning, analysis, design, construction, operation, or outcome of the NEPA analysis and Environmental Impact Statement for the Powder River Basin Oil and Gas Project."

According to the BLM program manager, BLM inadvertently neglected to provide a copy of the draft EIS to EPA before sending it out for public comment. Notwithstanding this oversight, EPA still had the responsibility to review the EIS. The BLM program manager said the first time he saw comments from the EPA concerning its review of the EIS was in a *Casper Star-Tribune* article in either late April or early May 2002. According to him, the newspaper account suggested that EPA was going to give the EIS an unsatisfactory rating.

The BLM program manager also provided us with a copy of the draft EPA review, which he had received along with comments on the EIS from the Wyoming Outdoor Council submitted during the public comment period. While he has not compared the draft EPA response to the final response, he believes that they both rated the EIS as unsatisfactory.

The BLM program manager said that he agrees with EPA concerns about the potential adverse impact on irrigation water in the basin. In fact, he stated that BLM had identified these same concerns but had failed to follow up on them. He said that BLM and EPA were working together to find solutions for the concerns raised in the EIS.

The Deputy Administrator of EPA was interviewed regarding this matter. She stated that on April 12, 2002, she received both a phone call and a memorandum from Mr. Griles informing her that he had recently learned that EPA was about to release its review of this EIS and that the review would reflect that the EIS was unsatisfactory. In their phone conversation, Mr. Griles told the EPA Deputy Administrator that he wanted BLM and EPA to work together to resolve the issues that EPA had with the EIS. He also asked that EPA delay releasing its review until these issues could be addressed. Mr. Griles noted that an EPA Acting Regional Administrator in Denver was releasing the review and he suggested to her that EPA wait until after the recently appointed Regional Administrator assumed office to release this review. Although Mr. Griles did not specifically say so to the EPA Deputy Administrator, she said her impression was that he thought that the Regional Administrator, having been appointed by the current administration, would be more favorable toward his (Mr. Griles') views.

The EPA Deputy Administrator was aware that the EIS pertained to oil and gas companies that desired expanding coalbed methane development and extraction in the Powder River Basin. According to her, the main point of Mr. Griles' phone call to her was the actual timing of the release of the EPA review. She said he was concerned that if a negative EPA EIS review was released, it could jeopardize or delay coalbed methane projects. The EPA Deputy Administrator related that Mr. Griles told her that he previously represented oil and gas clients and that he believes that coalbed methane is an important energy source.

The EPA Deputy Administrator said she told the Deputy Secretary that since he used to represent clients that were now interested in doing work in this area, perhaps he should not be involved in this matter. She recalled that Mr. Griles responded that it was okay for him to be involved because this was a policy matter, not a specific matter. She added that later, after the *Washington Post* article criticized Mr. Griles for his involvement in this matter, he told her that she was right – that is, his ethics attorneys all agreed that he should not have been involved.

The EPA Deputy Administrator said that after the phone call from Mr. Griles, she called the Acting Region 8 Administrator at that time and relayed her discussion with the Deputy Secretary. She recalled that the Acting Region 8 Administrator did not have a problem with delaying the release of the review. She stated that sometimes there is a "date certain" or deadline that would compel the release of reports and documents. She stated that because this was not the case in this matter, there was no compelling reason not to delay its release.

The EPA Deputy Administrator stated that EPA was not opposed to coalbed methane development in the Powder River Basin. She said that EPA, however, wanted to ensure that all environmental concerns were adequately addressed and that appropriate safeguards were implemented to protect the environment. She advised that when EPA agreed to delay releasing its review, it was not with the intent that it would change its mind about these needed safeguards. She stated that she did not compare the original draft of the EPA review to the final report that was released. Thus, she does not know if the delayed release had any effect on the final product.

We interviewed EPA's retired Deputy Administrator of Region 8, Denver, Colorado. At the time of this event, he was acting administrator. According to him, BLM had drafted two EISs for the Powder River Basin – one for Montana and one for Wyoming. EPA noted that the two reports were filled with conflicts and were poorly executed. Consequently, EPA prepared an assessment that was very critical of both EISs.

The retired Deputy Administrator of Region 8 reported that after Mr. Griles had communicated DOI's concerns to the EPA Deputy Administrator, she briefed him and he agreed to withhold the assessment pending the arrival of the newly appointed Region 8 Administrator. The retired Deputy Administrator of Region 8 claimed that this delay only resulted in a more critical assessment being written due to the extra time the writers were then able to spend on the document and the significance of the newly appointed Regional Administrator's official signature on the negative assessment. The retired Deputy Administrator of Region 8 stated that while he favored development of the Powder River Basin area, it must be done without damaging the environment.

The retired Deputy Administrator of Region 8 opined that the current EIS is a true product of collaboration between BLM, EPA, and other interests involved in the Powder River Basin. He denied that he was pressured into any decision by Mr. Griles' letter or phone call to the EPA Deputy Administrator, or any subsequent conversation he had with officials of either DOI or EPA.

The Assistant Regional Administrator for the Office of Ecosystems, Protection, and Remediation at Region 8 was also interviewed. He is the EPA designated lead for Powder River Basin coalbed methane development. He said he was aware that EPA's review of the draft EIS had been leaked to the press before it had been coordinated with BLM. He recalled that this review had garnered considerable media attention.

The Assistant Regional Administrator for the Office of Ecosystems, Protection, and Remediation at Region 8 said EPA had not been invited to be a cooperating agency in this matter but it still had both the authority and the responsibility to review the EIS. He said EPA's review identified several shortcomings and problems and ultimately rated the EIS as unsatisfactory. According to him, the problems in the EIS were not daunting and could be resolved. He said the purpose of the review was to notify BLM that the problems should be addressed and resolved. He added that EPA has always considered expanding coalbed methane drilling to be possible. EPA simply wanted to ensure that every environmental impact was identified along with the remedial action to address that impact.

The Assistant Regional Administrator for the Office of Ecosystems, Protection, and Remediation at Region 8 said he was aware of Mr. Griles' April 12, 2002 memorandum to EPA. He stated that it had no affect on him or Region 8, and although the release of the EPA review was temporarily postponed, it did not change. He said the review still rated the EIS as unsatisfactory. He related that he does not understand the purpose of Mr. Griles' memorandum, but he believes that it can be argued that it actually delayed the process. He said that neither EPA's initial draft review nor its final review was a "showstopper." In both instances, environmental concerns simply needed to be addressed. EPA issued its review of both the Wyoming and Montana EISs on May 15, 2002.

The Assistant Regional Administrator for the Office of Ecosystems, Protection, and Remediation at Region 8 also acknowledged that he has met on several occasions with Marc Himmelstein regarding Powder River Basin coalbed methane development. He said he was aware that Himmelstein represents a number of clients seeking to expand coalbed methane development in the basin. He related that Himmelstein was concerned that EPA's review of the EIS would slow the progress of coalbed methane development. He said he was aware of Himmelstein's letter written to EPA headquarters expressing the same concerns. The Assistant Regional Administrator for the Office of Ecosystems, Protection, and Remediation at Region 8 acknowledged that Himmelstein's letter was similar in nature to the Mr. Griles memorandum sent to EPA headquarters several months earlier.

The Assistant Regional Administrator for the Office of Ecosystems, Protection, and Remediation at Region 8 stated that all environmental concerns have now been addressed and a final EIS had been published. He added that the relationship between EPA and BLM is currently

very good. He attributed this improved relationship to the efforts of BLM Director Clarke and the newly appointed Region 8 Administrator.

Note: On July 14, 2003, BLM resumed permitting coalbed methane wells in the Powder River Basin of Wyoming. Among the first companies to have their development approved were Lance Oil and Gas Company, Inc.; Devon; and Williams.

Mr. Griles was interviewed regarding his April 12, 2002 controversial memorandum to EPA. He stated that the Deputy Assistant Secretary for Land and Minerals Management at that time came to his office on the morning of April 12 with a concern that BLM and EPA were not communicating. Mr. Griles said he attempted to call the EPA Deputy Administrator to address this issue. However, he said that when he was initially unable to contact her by phone, a memorandum was prepared, which he then signed and had sent to EPA. Mr. Griles recalled that the Deputy Assistant Secretary for Land and Minerals Management drafted the memorandum.

Note: Mr. Griles' personal secretary prepared the final memorandum.

Mr. Griles said he was not aware of any specific problems or issues involving the EIS. He stated that his only purpose in contacting EPA was to intervene in what had been presented to him as a communications problem. He said he did not contact EPA to advocate a view concerning the EIS. He stated that he had asked the EPA Deputy Administrator to help resolve this issue and that she had tasked her Associate Deputy Administrator to help with it.

Mr. Griles acknowledged that he did finally contact the EPA Deputy Administrator by telephone later in the day and they discussed the contents of his memorandum. He recalled that during this conversation, he mentioned that he had previously represented clients who were now involved in coalbed methane production. She asked him if this might be a conflict of interest, and he told her that he did not think so. Mr. Griles added that the purpose of bringing up his previous involvement was simply to emphasize to her the importance of coalbed methane development within the overall national energy program. Nonetheless, Mr. Griles stated that he personally discussed his EPA memorandum and subsequent phone call to the EPA Deputy Administrator with Deputy Associate Solicitor Timothy Elliott shortly thereafter. He said Elliott, in memoranda dated May 3 and May 21, had opined that no ethics violation had occurred.[28] However, Elliott, in these memoranda, also noted that since Mr. Griles had a prior association with several companies involved in the EIS process, he should not participate in DOI decisions on these specific EISs.

Mr. Griles stated that he did not specifically recall a second conversation with the EPA Deputy Administrator or telling her that she had been right and that his attorneys had advised him that he should not have been involved in writing the memorandum. However, he said he does not doubt that the conversation took place. He opined that what he might have said, or meant, was that, in light of the resulting media criticism, he "wished" he had not written the memorandum.

[28] The memoranda from Elliott identified the date of this personal discussion as April 24, 2002.

Mr. Griles was also asked why he recommended that EPA withhold its review until the newly appointed Regional Administrator came on board. He replied that, in his opinion, the new Regional Administrator, who was a political appointee who was due to report the following Monday, should not have been bound by an EIS review signed by a career employee.

Mr. Griles acknowledged that he had represented several clients in the Powder River Basin area in Montana in about 1998 or 1999. He specifically recalled that he had represented Redstone Gas Partners, LLC, which was interested in expanding coalbed methane drilling operations in Montana. Mr. Griles said his role was to assist the company in obtaining federal funding for conducting an EIS that was required before BLM would authorize additional drilling permits in Montana. Mr. Griles claimed that he was successful in these efforts and federal funding was obtained.

The Deputy Secretary also acknowledged that a number of his former clients hold oil and gas permits in the Wyoming portion of the Powder River Basin. He specifically identified Western, Devon, and Yates as three of these former clients. He was also aware that these clients had later collaborated on funding an EIS in order to expand coalbed methane production in Wyoming. However, Mr. Griles maintained that his representation of these clients never involved the Wyoming EIS. Mr. Griles stated that he had not supported his former clients' strategy to fund the EIS themselves, but they had not asked for his advice or services in the matter. Mr. Griles stated that he also represented a group in Wyoming, known as the Coalbed Methane Ad Hoc Committee, regarding congressional action on a Senate bill.

The Deputy Secretary insisted that when he signed the memorandum to the EPA Deputy Administrator, he was not aware that National was currently representing clients involved in the development of coalbed methane in the Powder River Basin. However, he added that prior to signing the memorandum, he considered the fact that he had not represented his former clients on this issue and that based on his understanding that the EIS did not constitute a particular matter, his involvement would therefore not violate his ethics agreement.

The former Deputy Assistant Secretary for Land and Minerals Management was interviewed. He said that when he arrived at DOI in February 2001, he became aware that BLM was experiencing problems with EPA in Wyoming and Montana. He explained that several individuals within BLM had informed him that BLM and EPA had an acrimonious relationship and that the EIS process was not progressing smoothly.

In April 2002, the former Deputy Assistant Secretary for Land and Minerals Management read a news article in the *Casper Star-Tribune* that reported that EPA was preparing to issue a negative assessment of the Wyoming EIS. He claimed that it was suspected that Region 8 EPA staff leaked or released information on a regular basis to the media before it was given to BLM. He stated that he suspected that EPA had leaked this information because the article referred to a draft EPA document that, to his knowledge, had not been made public.

The former Deputy Assistant Secretary for Land and Minerals Management stated that he was also concerned that EPA was not collaborating with BLM on the preparation of the EIS. He took these concerns directly to the Deputy Secretary. According to the former Deputy Assistant

Secretary for Land and Minerals Management, he and Mr. Griles then both drafted the April 12, 2002 memorandum to send to the EPA Deputy Administrator requesting cooperation between the agencies. The former Deputy Assistant Secretary for Land and Minerals Management insisted that he and Mr. Griles were only attempting to involve EPA's upper management in the EIS process and to promote interagency cooperation. He denied that his actions were motivated by any pressure from or contact with industry or political officials. Further, he advised that neither he nor Mr. Griles thought this memorandum would or could change the outcome of EPA's assessment of the EIS.

According to the former Deputy Assistant Secretary for Land and Minerals Management, the intended purpose of the memorandum was achieved because it resulted in his receipt of voluminous information from EPA regarding the ongoing EIS process and EPA's dissatisfaction with the draft EIS. He said he provided this information to the BLM officials involved in the EIS process.

We interviewed Timothy Elliott, Deputy Associate Solicitor, regarding this matter. He stated that shortly after sending the April 12, 2002 memorandum, the Deputy Secretary contacted him and advised him that the media was questioning his action. Elliott said Mr. Griles was seeking his opinion as to whether or not he may have committed a violation of any ethics rules. Since Elliott was out of town when Mr. Griles called, they were unable to meet in person until April 24, 2002.

Elliott stated that, based on the facts, as represented by Mr. Griles, he made a determination that no violation had occurred. He said Mr. Griles told him that he wrote the memorandum and made the phone call to the EPA Deputy Administrator out of concern that EPA was not communicating with DOI and that this lack of communication involved this issue as well as others. The Deputy Secretary told Elliott that his intent was to ask EPA for better coordination with DOI. Elliott viewed this as a procedural issue, not a substance issue. Elliott said, however, that Mr. Griles did not tell him that he had previously represented Redstone Gas Partners, LLC, regarding an EIS in Montana.

Contrary to the statements of Griles, the former Deputy Assistant Secretary for Land and Minerals Management, and the EPA Deputy Administrator, Elliott said he believed that the Deputy Secretary's memorandum was subsequent to the phone call and that it documented the essence of the phone call.

Elliott stated that in regard to "an appearance of a conflict" in this matter, he did not consider the appearance issue as significant as a violation of the law or a rule. He opined that "appearances" are subjective and for the most part are up to the individual to discern. He added that he rarely gives advice regarding appearance issues to Mr. Griles or any other senior official under the premise that they themselves will understand better whether or not a given matter will present a possible appearance of impropriety.

Elliott maintained that, in his opinion, Mr. Griles' April 12, 2002 memorandum was not an ethics violation. Nonetheless, he would now advise Mr. Griles against writing it, based on the appearance issue. He also said he realizes that the Deputy Secretary is a "lightening rod" and a

target of several advocacy groups and therefore should avoid certain activities simply to prevent them from becoming a distraction to his work.

On May 8, 2002, with the assistance of Elliott, Mr. Griles executed another written recusal restricting his involvement in any activities pertaining to the EISs relating to coalbed methane drilling in Wyoming and Montana. The decision to prepare another recusal was strictly that of Mr. Griles, according to Elliott. Elliott recalled that although he counseled Mr. Griles that another recusal was not necessary, the Deputy Secretary wanted to execute this recusal to prevent a future recurrence of any controversy.

A career attorney in the Office of the Solicitor (SOL) was interviewed. We asked him if he had any recollection of his involvement in crafting recusals or ethics agreements for the Deputy Secretary. He claimed that he had worked with OGE and a former DOI ethics official to craft Mr. Griles' original ethics agreement that was sent to a DOI Department of Human Resources employee in early 2001. He said he subsequently became involved in researching a response to OGE after Deputy Secretary Griles wrote a memorandum to the EPA regarding a "coalbed methane EIS." The SOL attorney claimed that he worked with Elliott to craft a response to OGE as to why the Department did not view Mr. Griles' memorandum as dealing with a "particular matter" from which he should be recused. The SOL attorney claimed that he researched the issue and worked with Elliott prior to completing the response. In fact, the SOL attorney acknowledged that he actually drafted the May 3, 2002 memorandum and that he signed it for Elliott because Elliott was unavailable.

The SOL attorney said he attended the April 24, 2002 meeting with Mr. Griles along with Elliott and Mr. Griles' special assistant. He said the facts and circumstances that he considered when conducting his research were essentially provided by Mr. Griles at this meeting. He said that during the meeting, neither Mr. Griles' nor National's client base was discussed. The SOL attorney acknowledged that he was not aware of Mr. Griles' involvement in securing federal funding for the EIS in the Montana portion of the Powder River Basin. He said he was also unaware that National was, at that time, representing the oil and gas companies who were funding the EIS in Wyoming. The SOL attorney said he could not conclusively say whether his opinion on whether Mr. Griles violated his ethical recusals would have been different if he had known this information, but he said he would have taken it into consideration.

We interviewed the Chief of Staff and Associate Deputy Administrator of EPA. She acknowledged that she had spoken to Himmelstein on several occasions regarding coalbed methane and the Powder River Basin. She said she was aware that he represented a number of companies that were interested in coalbed methane development. She stated that she had documented and forwarded Himmelstein's questions and concerns to the appropriate EPA regional or agency officials.

The Chief of Staff and Associate Deputy Administrator of EPA also confirmed the former Deputy Assistant Secretary for Land and Minerals Management's assertion that Mr. Griles' April 12, 2002 letter ultimately resulted in better cooperation and dialogue between EPA and BLM personnel involved in the EIS process. She stated that the letter attracted the attention

of EPA's upper management, which, in turn, resulted in a directive to Region 8 EPA personnel to collaborate with BLM.

A review of Mr. Griles' calendars confirmed that on April 11, 2002, he met with representatives of Western.[29] Other attendees at this meeting included Rebecca Watson, Assistant Secretary for Land and Minerals Management; a director of the PIRA Energy Group, New York; a manager at BLM; and a former Deputy Assistant to the Vice President for Domestic Policy.

Himmelstein stated that he had been aware of this April 11 meeting, explaining that his client, Western, had hired PIRA to do an economic analysis on natural gas and its impending "crunch." He said the purpose of this meeting was to present this analysis to DOI and other government agencies involved in energy. He denied that he had spoken to Mr. Griles about this meeting or that the meeting had anything to do with the EISs.

Watson was interviewed, and she recalled that she attended this meeting in Mr. Griles' office and that Western representatives led the meeting. She said Western had hired PIRA to do an analysis of the natural gas supply and this meeting was designed to brief DOI, as well as White House staff, on the analysis. Watson stated that the Powder River Basin was not the topic of this meeting and she could not recall that it was even discussed. However, she could not rule out that it was not mentioned in passing.

A director of PIRA Energy Group was interviewed. He said that PIRA client Western asked him to present a briefing on the natural gas supply to DOI. He said he believed that the representative for Western Gas Resources scheduled the briefing. He said he believes that the Powder River Basin was mentioned because it is a significant area for potential natural gas supply. However, he said the ongoing proposal to expand coalbed methane development there and the EIS process were not discussed at the briefing. The PIRA Managing Director said he is not certain if he even knew about that issue at the time. However, he said he is now aware of the issues and that EPA had rated the EIS for the Powder River Basin as unsatisfactory.

Mr. Griles' special assistant was interviewed, and she recalled that she had posted the meeting with Western on Mr. Griles' calendar. She said she believed that the Western Gas Resources representative had arranged the meeting. Mr. Griles' special assistant said she attended the meeting, but she did not recall if the Powder River Basin was mentioned.

Note: Mr. Griles' special assistant produced copies of the PIRA presentation and Mr. Griles' handwritten notes from the meeting; however, nothing in the briefing or the notes makes any reference to the Powder River Basin.

Mr. Griles' special assistant said she was aware that the Deputy Secretary formerly represented Western and that he was recused from doing any business with the company. She recalled that after the Western Gas Resources representative called, she discussed the issue with Mr. Griles and

[29] The Western Gas Resources representative and an official of Western Gas met with Mr. Griles. As noted previously, the Western Gas Resources representative was heavily involved in the EIS process and had worked at National with Mr. Griles.

probably Associate Deputy Secretary James Cason. She said the reason she discussed the meeting with them was to ascertain that there would be no conflict. She said it was her understanding that Western was only introducing PIRA to the Department as a source of information. She said it was not a business meeting per se, and there was nothing that directly involved Western "on the table" at the meeting. Mr. Griles' special assistant said they all agreed that it would be appropriate for Mr. Griles to attend the meeting, and she did not contact either DOI's Ethics Office or the SOL to discuss the matter.

Mr. Griles reiterated the above information. While he acknowledged that Western was a former personal client of his, he asserted that he did not represent them on coalbed methane issues or the Powder River Basin. He said he was also aware that Western is a current client of National. Mr. Griles recalled that the April 11, 2002 meeting involved a study of the supply of natural gas. He denied that he had any discussions with anyone at this meeting regarding the EIS process in the Powder River Basin.

Mr. Griles acknowledged that prior to the meeting, he had discussed its propriety with his special assistant because it was being coordinated by his former client. He said he and his special assistant decided that since the meeting was strictly informational, with PIRA providing a briefing regarding the natural gas supply, and since Western would not be making a presentation or asking for anything and no decisions would be made, the meeting would not constitute a particular matter or present any conflict.

During this investigation, we learned that while the Western Gas Resources representative was employed by National, she had coordinated a guided tour of the Powder River Basin in conjunction with Senator Michael Enzi's (R-Wyoming) Office. Further, we determined that two DOI employees, Conrad Lass, Chief of Staff for the Director of BLM, and Mr. Griles' special assistant, went on this tour held during the 2001 Thanksgiving holiday. Approximately 40 people went on the tour, including representatives from the Department of Energy, EPA, the State of Wyoming, and representatives from the oil and gas industry.

We focused on this tour principally because the costs of the tour were originally paid for by National and ultimately reimbursed to National by its clients and several former clients of the Deputy Secretary, including, but not limited to, Marathon; Fidelity Exploration and Production Comapany; Yates; Western; Devon; and Williams.

Mr. Griles admitted that he was aware of this tour and said he believed that DOI had been invited by Senator Enzi's office. He further stated that the reason his special assistant went was because Cason was unable to go. He explained that his special assistant is a part of his management team and that she has attended other similar tours. Mr. Griles insisted that he was not aware that National actually orchestrated this tour along with several clients it was representing regarding coalbed methane development in the basin. He also insisted that he was not aware that National was representing anyone regarding coalbed methane development in the Powder River Basin.

Reviews of Lass' voucher, credit card report, and official ethics file revealed that he filed a voucher and used his government credit card for the trip. The voucher noted that several meals were provided to him.

We determined that Lass did file a DI-2000 Report (required by 31 U.S.C. § 1353) for the payment of these meals from a nonfederal source; however, his DI-2000 and voucher were both filed nearly 8 months after the trip and were dated July 31, 2002, and August 1, 2002, respectively.

Note: Lass' DI-2000 was returned to him with a notation on it signed by Shayla Simmons and dated August 1, 2002. This notation stated, "received form after travel taken. I cannot approve, but had I been consulted before the travel, I would have approved the acceptance."

When interviewed, Lass stated that he was appointed as special assistant in mid-2001 to then-Acting Director of BLM Nina Hatfield and the Deputy Assistant Secretary for Land and Minerals Management at that time. After Kathleen Clarke was confirmed as the Director of BLM, he was then selected as her chief of staff.

Lass stated that when he arrived at DOI, he was given mostly energy matters to work on because he had experience in that area from his previous work experiences at the Southern Company and as the Director of Federal Land Policy with the State of Wyoming.

Lass said he first met the Western Gas Resources representative when he was working for the State of Wyoming and she was working with Western. Lass stated that he was well aware of the Western representative's association with Mr. Griles, National, and Mr. Griles' special assistant. However, he denied that he ever discussed the development of coalbed methane in the Powder River Basin with the Deputy Secretary. He was unable to explain why Mr. Griles' special assistant had toured the Powder River Basin but assumed she had received the same invitation he had from Senator Enzi. He claimed that he filed his voucher and DI-2000 late because he continued to travel extensively after the tour and he forgot to submit the form until July 2002. Lass provided several documents to the OIG relative to this discussion, including his invitation for the tour from Senator Enzi, a tour schedule, a response form confirming Lass' attendance, and a copy of his DI-2000 and supporting documents.

We also reviewed the voucher, credit card report, and official ethics file for Mr. Griles' special assistant. This review revealed that she filed a voucher and used her government credit card for this trip. The voucher was dated November 30, 2001, and noted that several meals were provided to her. However, we were unable to locate any filed DI-2000 for her.

Mr. Griles' special assistant was interviewed regarding her attendance at the tour, and she claimed that she went on the tour when Associate Secretary James Cason was invited but was unable to attend. She said her trip was approved by Mr. Griles; however, she denied speaking to him about her trip after she returned. She stated that the purpose of the trip was to see coalbed methane wells in production. She recalled that, in addition to Lass, other attendees included representatives from EPA, Members of Congress and their staffs, and private companies. She said that while she knew some of these private companies were clients of National, the only specific company name she could recall was Williams.

Mr. Griles' special assistant stated that the reason she did not file a DI-2000 Report for this trip was that she was unfamiliar with the DI-2000 and the requirement that she seek authorization for

receipt of meals. She further claimed she would have probably failed to pre-submit the form because she was unaware that any meals were being provided. She said she only recently learned of the form after members of the Deputy Secretary's support staff showed her how to access the form on the DOI Web site.

When the Western Gas Resources representative was interviewed regarding this tour, she stated that she coordinated the tour on behalf of National's clients, including Marathon; CMS Oil; Devon; Western; Barrett Resources Corporation; Williams; and Yates. She stated that besides Lass and Mr. Griles' special assistant, other federal government attendees included representatives from EPA, the Department of Energy, and several elected officials. She acknowledged that National had initially paid the expenses for the tour but was subsequently reimbursed by the above-named clients. According to her, the purpose of the tour was to acquaint government officials and elected representatives with coalbed methane development operations and to show them that these operations do not present ecological or environmental risks.

Himmelstein was interviewed regarding this tour. He stated that he had attended a meeting with EPA and U.S. Senators Conrad Burns (R – Montana); Michael B. Enzi (R – Wyoming); and Craig Thomas (R – Wyoming), during which coalbed methane development was discussed. During the meeting, Senator Enzi recommended setting up a tour of the Powder River Basin to see first-hand the affects of coalbed methane development. Himmelstein agreed to coordinate the tour.

Himmelstein recalled that Senator Enzi sent invitations to several government agencies as well as to environmental groups. He said he was aware that Lass and Mr. Griles' special assistant represented DOI on the tour. He said he had no explanation, however, as to why Mr. Griles' special assistant would represent DOI on this issue. Himmelstein stated that the development companies (he was not certain of the exact companies) arranged and paid for the buses to transport the tour group. Himmelstein recalled that his company, National, paid for two dinners and one lunch for all of the participants on the tour.

Shayla Simmons, DOI's Designated Agency Ethics Officer, and Arthur Gary, DOI's Alternate Designated Agency Ethics Officer, were interviewed regarding this issue. Simmons was shown a copy of a DI-2000 completed by Lass and submitted to the Office of Ethics on or about August 1, 2002. Lass had reported on this form his receipt, in November 2001, of approximately $65 in meals from a group of companies involved in coalbed methane gas production in the Powder River Basin, which he listed on a separate sheet of paper.

Simmons explained that because Lass failed to submit the DI-2000 prior to the origination of the trip, she was unable to approve Lass' acceptance of the meals. Simmons and Gary opined that DOI employees can accept meals and other payments from nonfederal sources as long as acceptance does not constitute a conflict of interest and the Ethics Office is allowed to evaluate each request for potential ethics violations or appearance issues. Simmons claimed that had Lass submitted the request to her office prior to the trip, she would have "probably approved the request" based upon the nature of the event and the amount received. Simmons and Gary both asserted that the tour event was a widely attended gathering, associated with a departmental issue or interest and attended by other governmental officials. Simmons and Gary admitted that

they were unaware that six of the eight private sponsors of the event were former clients of J. Steven Griles and Associates, LLC; NES, Inc.; or National.

Simmons agreed that the coalbed methane companies were prohibited sources but stated that Lass and Mr. Griles' special assistant would have been able to receive the meals because of the low cost, their positions at DOI, and the attendance by other government officials. Simmons explained that each request is reviewed on a case-by-case basis and what might be approved 1 month for an individual might not be approved for another individual attending a similar event the next month.

An article in the September 2003 edition of *Vanity Fair* magazine titled "Sale of the Wild" discusses a number of alleged improper activities by DOI officials. The article states that after Deputy Secretary Griles recused himself from the coalbed methane development issue, BLM Director Clarke became increasingly involved in this matter. Further, the article claims that Himmelstein asked for and received separate meetings with Clarke and her Chief of Staff, Lass, to discuss his client's interests in the development of coalbed methane in the Powder River Basin. Clarke is quoted in the article as saying that she "wasn't at all bothered by meetings with her boss's former lobbying colleague" and that "Steve has never put one iota of pressure on me about this issue … he won't even talk to me about this."

Since Clarke had previously denied to the OIG that she had ever spoken to Himmelstein regarding coalbed methane development in the Powder River Basin (see page 51), she was re-interviewed concerning this issue. At the outset of the interview, Clarke was reminded of her previous statement to the OIG and how that statement now contradicted with her statements in *Vanity Fair*.

Clarke was unable to offer any explanation for her previous statement to the OIG and she readily admitted that she had met personally with Himmelstein on at least two occasions and had "probably" spoken to him about "energy issues" regarding the Powder River Basin. She also stated that she is not recused from speaking to Himmelstein about the Powder River Basin and she denied she has ever spoken to the Deputy Secretary about this issue.

Clarke was unable to recall any specific issue that she might have discussed with Himmelstein regarding coalbed methane development in the Powder River Basin. However, she agreed that if she had met with Himmelstein, then coalbed methane would have been discussed.

When Lass was interviewed on this subject, he acknowledged that he had met personally with Marc Himmelstein "four or five times" since his appointment to DOI. He stated that he first heard of Himmelstein when he worked for Southern Company, which was a member of the Edison Electric Institute (EEI) – a client of Himmelstein. However, he denied ever meeting with Himmelstein until he assumed his position at DOI. He readily admitted that whenever he meets with Himmelstein, they talk about a wide range of energy issues, including development of coalbed methane in the Powder River Basin. Lass denied that he had ever spoken to Mr. Griles about the Powder River Basin, coalbed methane development, or his meetings with Himmelstein.

Himmelstein recalled meeting with both Clarke and Lass in early 2002 on coalbed methane issues. However, he claimed the issues discussed pertained specifically to his client, Williams, and coalbed methane development in Colorado, not the Powder River Basin.

Mr. Griles said he had never discussed the Powder River Basin with either Clarke or Lass – "period," and he also strongly articulated his position that his April 12, 2002 letter to EPA was not a violation of his recusals. He explained that he never represented any of the companies in Wyoming regarding the EIS; he insisted that the mere writing of the letter to EPA did not constitute involvement in the actual EIS process; he reiterated that he did not do anything more than ask for better communication between DOI and EPA; and finally, he said he did not advocate for any particular position – one way or the other. Mr. Griles concluded by saying that since his letter was not "an affirmative action to positively influence an action," his involvement was not prohibited.

The Deputy Secretary asserted his opinion that the EIS does not constitute a "particular matter involving specific parties." He said, "I understand what a particular matter is …based on any definition of particular matter, under any sense, since I have been involved with the government, this EIS would not be a particular matter." Mr. Griles called the EIS a generic matter that impacted a lot of different parties, including local governments and private individuals, not just the oil and gas industry. Mr. Griles said his understanding of a particular matter is "a specific action on behalf of a particular company or companies that will allow that particular company to obtain something or to perform an action." In his opinion, any action that has a "universal affect" or any action that does not authorize an action would *not* constitute a particular matter.

Mr. Griles added that his position was validated by the Department's Ethics Office in its letter to OGE, declaring that it, too, did not believe the EIS constituted a particular matter. Mr. Griles mentioned that in a recent Wyoming court case involving Marathon, the court ruled that an EIS does not create a right to do anything. It merely stands on its own. Consequently, regardless of the EIS, an oil and gas company that wanted to drill for natural gas would still be required to comply with the permitting process, and there was no guarantee that it would be granted an approval.

Note: As previously stated, as of September 2002, more than half of the drilling permits in Wyoming and nearly all of the permits in Montana were owned by either former clients of the Deputy Secretary or former or current clients of National.

As we were concluding our report, DOI Deputy Chief of Staff Sue Ellen Wooldridge contacted us regarding OGE's previously stated opinion that "the coal bed methane project in its entirety is a particular matter involving specific parties." She stated that she had additional information that may affect OGE's position.

Upon interview, Wooldridge provided a Memorandum for the Record that advances the view that coalbed methane development in the Powder River Basin and the required EISs do not constitute a "particular matter involving specific parties." The memorandum also provides additional information on BLM's processes for approving drilling permits.

After reviewing the information in this memorandum, the BLM program manager was reinterviewed regarding the process involved in initiating the Wyoming EIS. He said this EIS was required to amend the existing resource management plan in order to expand drilling for coalbed methane. He stated that BLM had also recognized the need to amend the plan at the same time the oil and gas companies requested additional permits. He said that in 1999, about 1,400 applications for permit to drill for coalbed methane in the Powder River Basin were pending before BLM.

The BLM program manager stated that the EIS was merely a planning aid that would be used for any future development. He said that if the EIS determined that coalbed methane development could be expanded, numerous companies and individuals stood to gain. On the other hand, he pointed out that the EIS, and the amended resource management plan, would not ensure developers that they would be able to expand their development. He explained that each site-specific request still required a separate environmental assessment before BLM could, or would, approve it.

The BLM program manager reiterated that it was not uncommon for third parties to fund an EIS, and he confirmed that neither the MOU between the companies nor the contract for the EIS would confer any special rights or privileges on the companies paying for the EIS.

The BLM program manager acknowledged that while there are many individuals and companies who have an interest in coalbed methane development, there are only about 50 to 60 companies that actually perform the drilling work. In addition, he acknowledged that the six companies that funded the Wyoming EIS were by far the largest of these development companies and therefore stood to benefit the most. He agreed with our estimate (page 63) that these six companies hold approximately 50 percent of all of the current drilling permits in the Wyoming portion of the Powder River Basin. He added that since the final EIS and amended resource management plan were issued, BLM has actually approved 683 new applications for permit to drill.

Investigation of Alleged Inappropriate Meetings

"Alleged Inappropriate Meetings" Names and Titles

Name	Title
Bernhardt, David	Director, Office of Congressional and Legislative Affairs
Burton, Johnnie	Director, MMS
Bush, Jeb	Governor, Florida
Cason, James	DOI Associate Deputy Secretary
Elliott, Timothy	DOI Deputy Associate Solicitor, Division of General Law
Ferguson, Fred	DOI Associate Solicitor, Division of Mineral Resources
Gary, Art	DOI Alternate Agency Ethics Officer and Deputy Director of the DOI Ethics Office
Griles, J. Steven	DOI Deputy Secretary
Himmelstein, Marc	President, National Environmental Strategies
Jarrett, Jeffrey	Director, OSM
Jones, Marshall	Deputy Director, U.S. Fish and Wildlife Service
Klee, Ann	Counsel to the Secretary
Mainella, Fran	Director, National Park Service
Morrison, Patricia	Deputy Assistant Secretary for Land and Minerals Management
Norton, Gale	DOI Secretary
Owens, Glenda	Deputy Director, OSM
Readinger, Thomas	Associate Director for Offshore Minerals Management, MMS
Ruff, Eric	DOI, Director of Communications
Waidmann, Brian	DOI Chief of Staff
Walston, Roderick E.	DOI Deputy Solicitor
Watson, Rebecca	Assistant Secretary, Land and Minerals Management
Wooldridge, Sue Ellen	DOI Deputy Chief of Staff

Alleged Inappropriate Meetings

Background

We received a letter on April 7, 2003, from Senator Joseph I. Lieberman requesting an investigation of Deputy Secretary Griles' reported inappropriate meetings with former clients, which had been cited in various media reports. Since we were already involved in a series of investigations involving the Deputy Secretary regarding similar allegations, we extended our investigation once again to include the Senator's concerns.

Our analysis of the various media reports concerning the Deputy Secretary's behavior resulted in a specific focus on four broad issues that the Deputy Secretary has been heavily involved with during his tenure in this administration. Since one of these issues, coalbed methane development, has already been the subject of a previous investigation in this report, we will not address this matter further. The three main issues we will address in this portion of our report include the following: Offshore Lease Litigation, Clean Air Regulatory Matters, and Mining Issues.

For each of these three issue areas, we sought to fully understand the Deputy Secretary's involvement and we paid special attention to any meetings where he alone exercised control over the attendance and the agenda. We thoroughly investigated any meetings held with his former clients or companies who were or are clients of National. We also inquired about several of the more notorious meetings that garnered media attention, including the Deputy Secretary's meetings with outside entities that may not have been former clients of his or National's but had personal interests in offshore lease litigation, clean air regulatory matters, and mining issues. Finally, where we could determine that the only attendees at a given meeting were federal officials, we made the assumption that the meetings involved legitimate and appropriate government business, not withstanding the propriety of the Deputy Secretary's attendance at any of them.

OIG Investigation

At the outset of this investigation, we reviewed the media's coverage of the Deputy Secretary during the time period referenced by Senator Lieberman – April 1, 2000 through April 7, 2003. We also extended this scrutiny of media reports during our investigation to ensure that we captured all relevant controversies concerning the Deputy Secretary. In addition, we reviewed executive schedules, appointment calendars, and other indicators of meetings; we interviewed over 50 individuals, some multiple times; and we obtained and examined hundreds of documents and e-mails.

Offshore Lease Litigation

Background

In the mid-1980s, Chevron, Conoco Oil, and Murphy Oil purchased offshore leases in the Gulf of Mexico in an area known as the Destin Dome for about $13.1 million. The Destin Dome is located 25 miles off the shores of Pensacola, Florida, and is believed to hold approximately 2.6 trillion cubic feet of natural gas. In 1996, Chevron submitted a development plan to the Minerals Management Service regarding drilling in the Destin Dome for natural gas. Prior to the completion of the approval process for Chevron's plan, Florida protested that the proposed drilling was inconsistent with Florida's environmental laws and was in violation of the Coastal Zone Management Act (CZMA).[30] In July 2000, Chevron, Conoco, and Murphy Oil filed suit against the United States for breach of their lease agreements in the Destin Dome. Our investigation confirmed that Chevron is a former client of the Deputy Secretary's and is a current client of National.

On May 29, 2002, President Bush announced "two historic actions in the state of Florida." The first of these actions was the settlement of the Destin Dome lawsuit. In this settlement the federal government agreed to repurchase seven of the nine leases from the plaintiffs for $115 million. The second action, packaged with the Destin Dome settlement, was a proposed agreement to buy all of the subsurface oil and gas development rights owned by the Collier Family in the Florida Everglades for $120 million.

Note: The Collier family allegedly owns 67 percent of the oil and gas rights in the Big Cypress National Preserve, the Florida Panther National Wildlife Refuge, and the Ten Thousand Island National Wildlife Refuge. A separate investigation of this matter is being conducted.

Similarly, nine companies that own 36 offshore oil and gas leases off the shore of California can no longer exercise their leases. A June 20, 2001 ruling of the U.S. District Court for the Northern District of California[31] found that California has the right to review the federal government's approval of offshore oil and gas leases under the CZMA. In January 2002, these companies also filed suit against the United States for breach of their lease agreements.

One of the plaintiffs in the California litigation is Aera Energy, LLC (Aera), which is 50-percent owned by Shell Exploration and Development (Shell). Shell is listed as a former personal client of the Deputy Secretary. Within each lease, other companies may also own percentage interests. Devon, another of Mr. Griles' former clients, owns such a percentage interest in several leases. On April 1, 2003, the Bush Administration opted against asking the Supreme Court to review this case, and to date, no settlement of this matter has been negotiated.

[30] A state's protest, under the CZMA, can only be overruled by the Department of Commerce.
[31] Affirmed by the Ninth Circuit Court of Appeals on December 2, 2002.

Meetings on Offshore Lease Litigation

Mr. Griles' official ethics file was again reviewed. In Part II of Schedule D, SF-278 (Executive Branch Personnel Public Financial Disclosure Sheet) executed by Mr. Griles on April 24, 2001, he noted that Chevron, Shell, and Devon were his former clients. Mr. Griles' duties for these companies, as annotated on the SF-278, are extracted below:

1. **Chevron Corporation** – "expert witness USA ex re.[sic], J. Benjamin Johnson, Jr., et al. v. Shell Oil Company, et al.; general representation of the merger of Texaco and Chevron."

2. **Shell Oil Company** – "expert witness USA ex rel., J. Benjamin Johnson, Jr., et al. v. Shell Oil Company, et al."

3. **Devon Energy Corporation** – "general representation on CBM issues, securing additional funding for BLM to add personal [sic] for review of APD's and inspection on the ground."

The above-noted references to "expert witness USA ex rel. J. Benjamin Johnson, Jr., et al. v. Shell Oil Company, et al." are actually references to a *qui tam* lawsuit filed under the provisions of the False Claims Act by J. Benjamin Johnson and John Martinek against Shell Oil, Chevron, and 16 other oil companies. In this lawsuit, Johnson and Martinek alleged that Shell Oil and other companies underpaid royalties due for oil produced on federal and Indian leases from 1980 to 1998. The Department of Justice (DOJ) joined the lawsuit against the defendants.

Our investigation revealed that Griles gave two separate depositions as an expert witness for the defendants in this lawsuit on August 2, 1999, and July 27 and 28, 2000. Eventually, the defendants, which included Shell and Chevron, settled with the federal government. Shell paid $110 million, and Chevron paid $95 million. Six other defendants – Oxy USA, BP Amoco, Texaco Oil, Kerr McGee, Marathon, and Exxon Mobile – which were current or former clients of National, also settled the lawsuit for an additional $110 million, collectively.

Note: Exxon Mobile is the other 50-percent owner of Aera's leases involved in the California offshore litigation.

Regarding his depositions, Mr. Griles acknowledged that he had been deposed by the federal government in this case because, during his previous tenure with DOI, he had been the author of the Department's rules regarding oil and gas royalties. He said he was paid for his time by the law firm of Fullbright and Jaworski, which he understood represented Shell. Mr. Griles stated that he did not consider that his involvement in this matter actually constituted a representation of Chevron even though he knew that Chevron – and a number of other oil and gas companies – were involved in this litigation. Mr. Griles claimed that he never met with or spoke to anyone from the oil and gas industry on this matter, including Shell or Chevron.

Note: During a review of Mr. Griles' actual depositions in this case, we found that he characterized his qualifications as an expert in royalty management and offshore continental

shelf leasing activities by citing "my work experience since 1988 continuing to be involved in activities relating to the oil and gas industry." Attorneys for defendants Shell, Exxon Mobil, Marathon, BP, and Unocal were present during his deposition. He further acknowledged meeting "numerous times" with the defendants' attorneys prior to these depositions, including a specific 1999 meeting in Houston with "a large room full of individual lawyers who represented the various … defendants in this case." His testimony also includes references to his prior representation of Shell, Cal Resources,[32] and Occidental Petroleum on oil and gas royalty matters other than the issues attendant to his case.

The Deputy Secretary added that, in retrospect, he believes that his SF-278 is incorrect by listing representation for Chevron on this matter. Furthermore, Mr. Griles claimed his and National's representation of Shell ended in about 1998, so he is not certain if it should have been listed on the ethics form either. The Deputy Secretary reiterated that much of what was documented on his SF-278 was based on his discussions with a former ethics officer. He expressed very little confidence in her expertise.

When Himmelstein was interviewed regarding this matter, he stated that neither National; NES, Inc.; nor J. Steven Griles and Associates, LLC, were ever under contract by Shell or Chevron or any other oil company regarding this offshore litigation. Himmelstein said Shell had been a client of National, which ended over 5 years ago. Himmelstein said he was aware that Mr. Griles had given several depositions in this matter, and it was his understanding that Mr. Griles was retained and paid by the plaintiff's attorneys. However, he said he has no factual information regarding the details of this arrangement.

Note: During our investigation, we obtained records reflecting that from November 1998 through November 2000, Fulbright and Jaworski paid Griles over $144,000 for his expert testimony.

On April 24, 2003, an OIG subpoena was served on Chevron, requesting documents and records pertaining to its business relationship with National; NES, Inc.; and/or J. Steven Griles and Associates, LLC.

On May 8, 2002, an attorney for Chevron provided the requested documents. The attorney noted in a transmittal letter that there were no documents from, by, or with J. Steven Griles and Associates, LLC. He also noted that there were no documents reflecting that Mr. Griles had any role other than serving as the signer of the initial contract and the first six invoices from National.

We reviewed subpoena documents and found the following information relative to this investigation:

1) A contract between Chevron and National dated October 26, 2000. Paragraph 6 of this document specifically identifies the NES, Inc. official as the National representative who would perform services. The contract is signed by J. Steven Griles as principal for National.

[32] LLC owned by Shell Oil.

2) Weekly meeting contact logs that identify various political and governmental contacts annotated by who made the contacts. The NES, Inc. official's name appears on a few of these logs. Mr. Griles' name is not listed.

3) E-mail generated by Chevron to the NES, Inc. official. There were no e-mails sent to Mr. Griles.

4) Invoices and payments to National in the amount of $10,000 per month running from November 7, 2000, through September 24, 2001. A facsimile transmittal from a representative from National to a representative from ChevronTexaco, dated November 3, 2000, directs that the second line of each check sent to National should read: "attn: Steven Griles." The first six checks, dated November 7, 2000 through April 11, 2001, include this line notation. Subsequent checks do not have a similar notation. The first six invoices from National, dated November 9, 2000 through March 30, 2001, are all signed by Mr. Griles.

Note: A lobbying report filed by National with both the Clerk of the House of Representatives and the Secretary of the Senate, dated August 14, 2001, provides information about National's representation of Chevron. This report states that National represented Chevron on "oil and gas exploration and production issues"… before the "Department of the Interior." The report names Mr. Griles and the NES, Inc. official as the individuals who acted as National's lobbyists for this issue.

In April of 2003, after the press published articles identifying the lobbying reports mentioned above, National filed amended lobbying reports. The amended reports state that the specific lobbying issues were "Chevron's proposed merger with Texaco." The amended reports also removed Mr. Griles' name as a lobbyist in this matter.

The attorney for Chevron was asked about the original lobbying reports, asserting that National represented Chevron before DOI on oil and gas matters. He stated that there is no record of any such representation. He insisted that he had provided the OIG with everything that Chevron has regarding its business relationship with National and/or Mr. Griles.

During their interviews, both Himmelstein and the NES, Inc. official stated that the original lobbying reports had errors. They were not aware of the errors until they saw the media reports. At that point, National immediately filed amended reports. Himmelstein and the NES, Inc. official both insisted that National only represented Chevron regarding its proposed merger with Texaco. They also insisted that Mr. Griles has never personally lobbied on behalf of Chevron.

Figure 7 illustrates offshore leases held in the Destin Dome and offshore California by the Deputy Secretary's former clients and National's former and current clients.

Figure 7

A review of the appointment calendars for Mr. Griles and other DOI officials revealed that from the date of his confirmation as Deputy Secretary (July 24, 2001), he attended at least 20 meetings regarding the litigation pertaining to both the Destin Dome leases and the offshore leases in California. The majority of these meetings were attended only by the Deputy Secretary and other DOI or federal government officials. However, an April 10, 2002 meeting was attended by virtually all of the plaintiffs in the California litigation, including Aera.

In addition, we investigated a meeting and subsequent phone conversations between Mr. Griles and Florida State officials because of Florida's interest in the outcome of the Destin Dome litigation.

Similarly, we investigated a meeting between Mr. Griles and Shell's Chief Executive Officer (CEO) because of Shell's interest in the outcome of the California offshore litigation and because Shell is listed as a former client of the Deputy Secretary on his SF-278.

Finally, we conducted personal interviews with a number of DOI and other federal officials who were either directly or indirectly involved with these two litigations.

As noted above, Mr. Griles' calendar for April 10, 2002, reflects a meeting between the Deputy Secretary and the California litigants, as follows:

- **April 10, 2002, 2:00-4:00 PM:** "[name removed] and [name removed], [title removed], Delta Petroleum here"

Note: Our investigation determined that this meeting was organized by an SOL attorney and included virtually all California litigants, as well as DOJ attorneys. Delta Petroleum owns a percentage of interest in California leases.

The SOL attorney and lead negotiator for DOI on the Destin Dome and California offshore litigations was interviewed. His name is mentioned as an attendee for at least 10 meetings with Mr. Griles on these litigations. He readily acknowledged that he had met with the Deputy Secretary on a number of occasions regarding both the Florida and California litigations. In fact, he stated that he is certain that he met with Mr. Griles many more times than Mr. Griles' calendar actually reflects. The SOL attorney said he worked directly with Mr. Griles on this matter instead of through his normal chain of command and that a number of his meetings with the Deputy Secretary were not actually scheduled. He added that Mr. Griles, while very involved in this issue, did not have decisionmaking authority for the resolution of the two litigations. He stated that since the money to settle this type of lawsuit comes from a DOJ fund, he was only allowed to negotiate with the plaintiffs on behalf of the government and was not ultimately responsible for finalizing any potential settlement. Further, the SOL attorney claimed that neither Mr. Griles nor anyone else had ever attempted to exert pressure on him regarding settlement negotiations in this matter.

The SOL attorney related that the decision to seek a settlement with Chevron, et al., had been made prior to Mr. Griles' confirmation. He said that just prior to this lawsuit, the federal government had lost a similar lawsuit regarding leases off the coast of North Carolina. As a result, he was certain that DOI would lose the Chevron lawsuit. He argued to settle this suit without going to trial. According to him, the previous administration had agreed with his assessment and was in favor of settling this lawsuit instead of going to trial. The strategy of buying the leases back from the plaintiffs was an integral piece of his assessment. The SOL attorney asserted that he had not been aware that Mr. Griles had a previous client relationship with Chevron.

The SOL attorney was asked to elaborate on a meeting that he attended on April 10, 2002, with the Deputy Secretary and the plaintiffs in the California offshore litigation. He stated that this meeting had been his idea. The goal was to get all of the plaintiffs in the California lease litigation together with the relevant federal officials. The purpose of this meeting was to inform the plaintiffs that while the government was interested in a settlement, it would need senior management from these companies to cooperate in obtaining price and costing information to determine a settlement offer. He said he had used this approach in previous settlement negotiations and he found it to be a useful tactic.

The SOL attorney further explained that it was important to have the actual decisionmakers for these companies present instead of just meeting with the companies' attorneys. However, in order to get the senior managers to agree to come, he thought it would be necessary to have a senior government official invite them and coordinate the meeting. When he approached Mr. Griles and asked him to host and coordinate the meeting, Mr. Griles agreed. He added that, in addition to himself and Mr. Griles, several DOJ attorneys attended this meeting. He specifically recalled that two DOJ attorneys were in attendance. He said virtually all of the

plaintiffs in this case were at the meeting – not just the officer from Delta Petroleum. While the SOL attorney could not recall all the names of the companies present, he did remember that a representative from Aera was present. He opined that there were approximately 10 to 12 plaintiffs at the meeting.

The SOL attorney said he knew Aera was owned by both Shell and Exxon Mobil. However, he claimed that he did not know Mr. Griles had previously represented Shell. He said that if he had known this fact, he would have asked the Deputy Secretary if there was a potential conflict of interest with his involvement.

The SOL attorney stated that he did not know exactly how long the April 10 meeting lasted but he believed it was close to 2 hours. He said the meeting took place in Mr. Griles' conference room on the sixth floor of the Main Interior Building. He added that it did not involve any other topic other than the California litigation and said he did not meet with the officer from Delta, or any other plaintiff, just prior to the main meeting.

The SOL attorney was asked to clarify how he first became aware of Devon's involvement in the California litigation and how he learned that Mr. Griles had recused himself from further involvement in this matter. The SOL attorney said he first learned of Devon's involvement sometime in early May 2002 when he collected all of the pleadings from the various plaintiffs. He stated that he believed that while Devon may have previously owned interest(s) in some of the leases, it had not actually joined the lawsuit until early May of 2002.

The SOL attorney said that sometime after May 15, 2002, he brought the pleadings to Mr. Griles. He said he was certain that this occurred after May 15 because he was too busy with the Destin Dome litigation prior to that date. The SOL attorney said he first gave a list of litigants to Mr. Griles' special assistant and recalled that as he was meeting with Mr. Griles, she came into the office and told Mr. Griles that he could not be involved in the California matter because Devon was a party to the lawsuit. Mr. Griles asked her to verify Devon's involvement, which she did immediately. The Deputy Secretary then told the SOL attorney that he used to represent Devon, so he could no longer be involved with the California litigation.

The SOL attorney was advised that Mr. Griles repeatedly indicated that he first learned of Devon's involvement around the time of the April 10 meeting with the California plaintiffs. The SOL attorney responded by saying that while he does not know what Mr. Griles may believe, he believes that Mr. Griles is mistaken. He said he has a very clear recollection of a May 2002 meeting where Mr. Griles first announced his need for recusal.

When she was interviewed, Mr. Griles' special assistant and screener corroborated the SOL attorney's account regarding the Deputy Secretary's oral recusal pertaining to Devon. She said she remembers the April 10 meeting and is certain that Devon did not attend. While she said she does not recall the exact date, she agrees that it was most likely in May 2002 when the SOL attorney produced court documents that reflected Devon's involvement. She said that she, the SOL attorney, and Mr. Griles discussed this together and that Mr. Griles readily agreed that since Devon was now involved, he would have to be recused from any further involvement in the issue.

Since Mr. Griles' special assistant also served as Mr. Griles' screener, she was asked about the propriety of his involvement in this matter since a major participant, Aera, was partially owned by his former client, Shell. She said she was not aware that Aera was partly owned by Shell. She added that, as a screener, she has never received any training or guidance regarding whether recusals apply equally to subsidiaries of former clients.

DOI Associate Deputy Secretary James Cason, who also served as Mr. Griles' screener, was interviewed regarding this matter. He was not involved in either of the offshore issues, and he was unaware that either Chevron or Shell had been former clients of the Deputy Secretary. He did not have any discussions with Mr. Griles about the propriety of his involvement in either matter. He stated that for a very short period after Mr. Griles became recused from the California litigation, he attended some high-level staff meetings regarding this matter.

When first interviewed, Mr. Griles stated that at some point, he learned that Devon had purchased some existing offshore leases that were part of the litigation. Reviewing his calendars, Mr. Griles said he believed he learned of Devon's involvement during a meeting with other lessees on April 10, 2002. He said that while Devon was not at this meeting, other attendees mentioned that Devon was now involved. Mr. Griles stated that upon learning of Devon's involvement, he announced to the attendees present that since he previously represented Devon, he was recused from any more participation or involvement in the matter, and he then left the room. He claimed that he has not been involved in this matter since that time. Mr. Griles added that he has not documented this recusal in writing.

Mr. Griles was reinterviewed at the end of our investigation of this matter. He stated that he was not certain of the date that he learned of Devon's involvement; however, he said he would agree with the SOL attorney and his special assistant if they recalled it occurred in May 2002. He added that he is certain that Devon did not attend the April 2002 meeting with the other litigants.

Mr. Griles said the reason why he recused himself in the California matter but not in either the Destin Dome or the Powder River Basin matters was because he had personally represented Devon. He explained that he had not personally represented Chevron. With regard to the Destin Dome matter, Mr. Griles argued that this was also not a particular matter because the lawsuit was actually against the Department of Commerce, which had failed to respond to the plaintiff's requests. Regarding the Powder River Basin matter, Mr. Griles reiterated his belief that it was not a particular matter from which he should be recused.

The Chief of Commercial Litigation, Civil Division, DOJ, was interviewed. He has been involved in both the Destin Dome and California litigation regarding offshore drilling as a supervisory attorney. He stated that he also attended the April 10, 2002 meeting with the California plaintiffs in Mr. Griles' conference room. He corroborated the SOL attorney's statement that the meeting was essentially a pre-settlement discussion. The Chief of Commercial Litigation said that most, if not all, of the plaintiffs were in attendance, but he could not recall the specific names of the companies. According to him, Mr. Griles led off the discussion by telling the companies that if a settlement action was to begin, the government needed their cooperation, including detailed financial information.

The Chief of Commercial Litigation added that this meeting was his only contact with Mr. Griles on either litigation. He said that the SOL attorney was the principal contact for DOJ with DOI on these matters. The Chief of Commercial Litigation said that the SOL attorney would often mention that high-level DOI officials were interested in this matter; however, he believed that the SOL attorney was referring to the Secretary, not the Deputy Secretary. The Chief of Commercial Litigation also added that he never observed any undue influence or pressure to settle either of these litigations. He stated that he is convinced that the Destin Dome settlement was fair and equitable.

A commercial litigation attorney, Civil Division, DOJ, who has been involved in both the Destin Dome and California litigation matters, was also interviewed. He also attended the April 10, 2002 meeting in Mr. Griles' conference room. He corroborated the SOL attorney's and the Chief of Commercial Litigation's representations regarding the attendees and the purpose of the meeting. Mr. Griles led the discussion in the meeting by asking the oil companies to cooperate and to provide financial information so that the settlement actions could proceed.

The commercial litigation attorney stated that he was aware that there was political sensitivity involved in these litigation matters, particularly the Destin Dome issue. He was also aware that the State of Florida was opposed to expanded oil drilling in the Gulf of Mexico. However, he stated that he was not aware that Florida Governor Bush's Chief of Staff had traveled to Washington, D.C., to meet with Mr. Griles and the SOL attorney on the issue. The commercial litigation attorney stated that while he was aware that Florida wanted a settlement, there was never any discussion that a settlement was needed simply to assist Governor Bush in his bid for re-election.

The commercial litigation attorney said he was also aware that White House attorneys were interested in the Destin Dome issue. However, he claimed that he neither met with them nor visited the White House to discuss this litigation. He further stated that although DOI was aggressive in its position toward settlement, he did not feel any undue pressure or influence. He added that from the beginning of this litigation, which was initiated during the Clinton Administration, DOI's position was to pursue settlement with the litigants.

The commercial litigation attorney stated that other than on April 10, 2002, he did not meet with the Deputy Secretary on either of these matters. He stated that he was not aware that plaintiff Chevron had been a former client of Mr. Griles. He said that had he known he would have mentioned this fact to the SOL attorney because he knew through the SOL attorney that Mr. Griles was involved in the issue. The commercial litigation attorney stated that in the California matter, he discovered that Devon, one of the leaseholders, had been a former client of Mr. Griles. Once he discovered this, he notified the SOL attorney. The commercial litigation attorney later learned that, based on Devon's involvement, Mr. Griles had recused himself. He said he could not recall the date or the specific circumstances surrounding his discovery of the Devon/Griles connection. He added that he was also not aware of a former business relationship between Mr. Griles and Shell's subsidiary Aera.

A public relations representative for Devon Energy Corporation was interviewed regarding Devon's involvement in offshore California leases. He stated that Devon owns a total of 0.3 percent of the oil and gas leases in this area. Devon obtained this interest in the leases when it acquired Pennzoil Energy in 1999. Due to the small amount of interest, it did not join the California lawsuit until May 2002. According to the public relations representative, Devon was neither invited to, nor did its representatives attend, the April 10, 2002 meeting with Mr. Griles.

Deputy Secretary Griles was interviewed regarding these matters. He stated that the Destin Dome litigation was ongoing when he assumed his current position. He said he initially received briefings from the SOL attorney, who told him that, based on his previous experience in similar cases, the plaintiffs would most likely win their case in court. The SOL attorney also told him that a decision to seek a settlement with the plaintiffs had been made by the Clinton Administration and that the SOL attorney's efforts had always been focused on reaching a settlement.

Mr. Griles pointed out that he personally was not a proponent for the decision to buy back these leases and not permit development of a known energy source. He stated that in his experience, the development and extraction of natural gas is both safe and environmentally sound. He said that knowing of the serious shortage of natural gas, his personal position would have been to allow the leases to be developed.

Mr. Griles acknowledged that he attended many meetings regarding offshore lease litigation. He said that since he was not in a decisionmaking position, he served as a coordinator of communications as well as a recipient of information on the status of the litigation. Mr. Griles asserted that when DOI senior management was briefed on the SOL attorney's negotiated agreement, there was a consensus that the proposed settlement agreement was appropriate. Mr. Griles said he was not certain of the mechanism but he was aware that DOJ knew of DOI's final settlement position. He stated that President George W. Bush actually made the final decision to move forward with the settlement offer that the SOL attorney had negotiated.

Mr. Griles acknowledged that the lead plaintiff for the Destin Dome litigation, Chevron, was a former client of National. He explained that Chevron had hired National to assist in its merger with Texaco Oil. Mr. Griles stated that although he signed the contract with Chevron for National, the NES, Inc. official performed the actual services for Chevron. Mr. Griles stated that he had not performed any of the work on this contract. He could not explain why the first six checks that National received from Chevron were payable to National, "attn: Steve Griles." However, he speculated that this had occurred because he was the individual who had actually signed the contract on behalf of National.

Mr. Griles added that when he became involved in the Destin Dome litigation, he thought that National had completed its work for Chevron. He was not aware that Chevron had continued to pay National through September 2001. Nonetheless, Mr. Griles insisted that his "limited" participation in this issue was not a violation of his recusal agreements. He based this opinion on the fact that since National had not represented Chevron in the Destin Dome litigation, Destin Dome would not be considered a "particular matter."

Regarding the similar litigation in California, Mr. Griles acknowledged that he had participated in a number of meetings pertaining to this issue. Mr. Griles stated that he was aware that Aera was involved in these leases; however, it is his understanding that because Aera is an LLC, it is a separate company from Shell and any ownership interests in Aera by Shell would not trigger his recusals. He further claimed that neither he nor National have ever represented Aera or Shell on offshore leasing matters. He stated that it is his belief that the California CZMA issue does not constitute a "particular matter" from which he should be recused simply because Shell's subsidiary is involved.

During his second interview on this subject, Mr. Griles said he had not heard of Aera before the issue arose in media reports, and he claimed that while he was engaged in this litigation, he did not know that Aera was owned by Shell. He could not explain his previous statement that since Aera was an LLC, it would not trigger his recusals.

As noted above, Mr. Griles' calendars for December 2001 and January 2002 reflect a meeting and two follow-up phone conversations between the Deputy Secretary and Florida officials regarding the Destin Dome litigation, as follows:

- **December 18, 2001, 2:00-2:30 PM:** "[name removed] & [name removed] (Governor Bush) here"

- **January 3, 2002, 2:30-3:00 PM:** "[name removed]-COS to Gov. Bush-(phone call – she'll call us)"

- **January 8, 2002, 5:30-6:00 PM:** "[name removed]-phone call [telephone number removed]"

The first meeting noted was held in the Deputy Secretary's office on December 18, 2001, between Mr. Griles and the Chief of Staff for Florida Governor Jeb Bush. The SOL attorney also attended this meeting.

When interviewed, the SOL attorney was asked about any knowledge he had of this meeting between Mr. Griles and the Chief of Staff for the Governor of Florida. The SOL attorney stated that he also attended the meeting but he could not recall for sure who had set it up. He opined that it was probably the Chief of Staff for the Governor of Florida. He added that no one else was present at this meeting even though Mr. Griles' calendar indicates that an employee from Governor Bush's office attended.

The SOL attorney stated that at this meeting, he did most of the talking for DOI. He said the purpose of the meeting was to discuss Florida's concerns about the Destin Dome litigation. He explained that Florida was firmly opposed to allowing additional drilling for gas to take place in the Destin Dome. Since he and Mr. Griles thought that drilling should be allowed, they discussed several options that they hoped would satisfy Florida's concerns and help obtain their approval for drilling. The SOL attorney specifically recalled that he discussed with the Chief of Staff for the Governor of Florida the options of having only one platform instead of three and

allowing a sub-sea completion where the drilling pipes would extend along the sea floor crossing over the Florida line into Alabama waters.

The SOL attorney stated that Florida officials made no decision during this meeting. However, he said that during the subsequent telephone calls, the Chief of Staff for the Governor of Florida relayed Florida's rejection of all of these options and its continued opposition to any additional drilling. The SOL attorney stated that while he did not have a specific recollection of being present during these calls, he believes that he probably was present. He said that, in any event, he learned of Florida's decision immediately after it was made.

The Deputy Secretary corroborated the SOL attorney's account of the meetings with the Florida Governor's Chief of Staff. He recalled that the purpose of the meeting was to discuss possible alternative methods of extracting natural gas from the Destin Dome in a manner that would be acceptable to Florida. Mr. Griles recalled that the Florida Governor's Chief of Staff's return phone call to him was to inform him that Florida officials had rejected any alternative methods and would not agree to allow offshore drilling. He said he does not remember a second telephone call with the Chief of Staff.

Florida Governor Jeb Bush's Chief of Staff was interviewed. She recalled that the purpose of the meeting at DOI was to receive information about some alternate methods for extracting oil from these leases. She recalled that in addition to Mr. Griles, one other DOI official was present. She said she believed this other person was a lawyer but could not remember his name. She said the meeting took about 20 minutes, but she could not recall the details about the alternate methods that DOI suggested to her. She said that while she did not recall the details, she did recall that the alternate methods were not acceptable to Florida. She explained that in this instance, she took the information from the briefing back to her staff in Florida and sometime later phoned Mr. Griles to inform him that Florida did not consider the alternatives acceptable. She said she only recalled one phone conversation with Mr. Griles.

The Florida Governor's Chief of Staff stated that she has neither met with nor spoken to Mr. Griles since that time period. She acknowledged that she knew Florida's position had prevailed and that a decision had been made for DOI to repurchase the leases in the Destin Dome, thereby precluding any further drilling. When she was asked if her meeting with Mr. Griles involved the political aspects of the Destin Dome issue, she replied that she could not recall whether or not that was a topic of discussion at the meeting.

Sue Ellen Wooldridge, Secretary Gale Norton's Deputy Chief of Staff, was interviewed regarding her knowledge of this matter. Wooldridge stated that she was not directly involved in the Destin Dome litigation issue but did recall that during her first week at DOI, a former Acting MMS Director had briefed her and the Secretary on this issue. As she remembered, the discussion of a settlement was already underway, and it was her impression that the decision to settle, or at least attempt to settle, had already been made and the new goal was to negotiate the best settlement possible. While Wooldridge was not sure when the settlement negotiations actually began, she said she did know that the SOL attorney had been assigned as DOI's lead negotiator.

Wooldridge was asked if she was aware of a meeting and several phone calls that the Deputy Secretary had with the Florida Governor's Chief of Staff during December of 2001 and early January 2002. Wooldridge denied that she had any knowledge of these events or the subjects that might have been discussed. However, she opined that if the meetings and phone calls had occurred, she had no doubt that the Deputy Secretary would have attempted to convince Florida officials that drilling in the Destin Dome could progress without causing any negative environmental impact on Florida.

Wooldridge explained that the Secretary and the Deputy Secretary were of the same opinion that the Destin Dome was a viable gas production area because the gas was "dry" and therefore there was little chance of any pollution if an accident occurred. Wooldridge conceded that the Governor of Florida was under intense pressure by environmentalists not to allow drilling in the Destin Dome and she asserted that this issue had been politicized by President Bush's opponents.

A former DOI Solicitor was interviewed regarding this matter. He recalled that during a passing conversation, Mr. Griles told him that he had learned that one of his former clients, Devon, had recently purchased an interest in some oil and gas leases off the shore of California and that he thought he should probably be recused from participating in the litigation. According to the former DOI Solicitor, the Deputy Secretary was not asking him for specific ethics advice or guidance but was rather "bouncing the idea" off him. He said he told Mr. Griles that he agreed he should recuse himself from any participation in this matter. He stated that he believed that, up to that point, Mr. Griles had been involved in this litigation but he does not have any first-hand knowledge about the context of that participation.

Mr. Griles' special assistant was questioned regarding a meeting Mr. Griles held on June 28, 2002, with an official of Shell. This meeting appears on Mr. Griles' calendar and has been noted in several media articles. She referred to notes that she took during the meeting. She identified the participants as the following:

- Steve Griles – DOI Deputy Secretary
- Special Assistant to the Deputy Secretary
- DOI intern
- Three officials and an attorney from Shell

Mr. Griles' special assistant related that the meeting was social and had taken place because "[name removed] was in town." She claimed that the meeting was held in the Deputy Secretary's office and was somewhat informal. She said the Shell representatives provided Mr. Griles with a "general presentation" on Shell's offshore production capabilities. She claimed that the conversation focused on platform capability and not on leases.

We interviewed the attorney for Shell. He related that shortly after the senior Shell official had been appointed, he traveled to Washington, D.C., to meet individuals and politicians connected to the energy industry. He indicated that the Shell group was composed of him, along with three other Shell representatives. He recalled that Mr. Griles attended the meeting along

with his secretary. He could not recall the secretary's name or any other DOI employee who may have attended.

The attorney for Shell related that the group spoke informally about Shell's energy projects in general terms. He denied that any attempt was made to lobby Mr. Griles on any particular matter involving Shell. He admitted that he was vaguely aware that Mr. Griles had represented Shell prior to his appointment as Deputy Secretary, but he was unable to recall the matter or issue.

The attorney for Shell claimed that the Shell group was aware it would be improper for anyone to attempt to lobby Mr. Griles on any matter. He reiterated that the visit was social and an opportunity for the senior Shell official to meet the Deputy Secretary.

Mr. Griles acknowledged attending the meeting with Shell. He stated that the senior Shell official simply stopped by to introduce himself. He said there was no business agenda, and business was not discussed.

Note: As previously mentioned, Mr. Griles said his and National's representation of Shell ended in about 1998, so he is not certain that the company should have been listed on his SF-278.

Timothy Elliott, Deputy Associate Solicitor, Division of General Law, DOI, was interviewed regarding this matter. Elliott stated that he had not been involved in providing either legal or ethics advice to anyone regarding offshore drilling litigation in Florida or California. He did recall that some time ago, long before the newspaper articles criticizing the role of Deputy Secretary Griles in this litigation, Mr. Griles had commented to him that he was going to be recused from involvement in California. According to Elliot, the Deputy Secretary told him that Devon had become a new partner with several oil companies holding leases offshore in California. Since Mr. Griles had formerly represented Devon, he (Mr. Griles) said he could no longer participate in this issue.

Fred Ferguson, Associate Solicitor, Division of Mineral Resources, DOI, was interviewed. Ferguson assumed his current position on October 17, 2001. At this point in time, negotiations involving the settlement of the Destin Dome matter were already underway. He said the SOL attorney was assigned to the issue.

Ferguson related that he was involved in one or two meetings with Deputy Secretary Griles and the SOL attorney on the Destin Dome matter. He said these meetings involved the SOL attorney briefing Mr. Griles on the status of the negotiations. He also recalled Mr. Griles asking if a settlement could be reached. According to Ferguson, it was very evident that a breach of the leases had occurred. He agreed with the SOL attorney that a settlement was the best approach for DOI. However, Ferguson did not know who had the final authority to accept a settlement on behalf of DOI in this matter.

Ferguson recalled that with regard to the offshore leases in California, it was his understanding that because Devon was involved, Mr. Griles was recused from any involvement.

Ferguson stated that he was unaware of any client relationship between Mr. Griles and Chevron or any other parties to the Destin Dome litigation.

The DOJ senior counsel to the Assistant Attorney General was interviewed. He advised that when he assumed his current position, the Florida lawsuit had already been filed. He said he was not aware of the specific details of the final settlement because it was crafted by his staff. He recalled that the SOL attorney had been designated as DOI's primary negotiator. The DOJ senior counsel advised that although DOJ retained responsibility for all final settlement decisions, it was not unusual to have an agency attorney familiar with the subject matter detailed to assist with the negotiations.

The DOJ senior counsel was asked about DOJ's position regarding the settlement of this lawsuit. He first explained that since DOJ is the guardian of the Judgment Fund, final approval for any settlement amount always remains with DOJ. However, he indicated that the agency is often asked for input on an appropriate settlement amount. He also said that all settlements over $2 million must be approved by the Associate Attorney General.

The DOJ senior counsel then said that sometimes DOJ and government agencies do not always agree on litigation strategy. He offered that DOJ attorneys are normally aggressive and prefer not to consider a settlement as a first option, while agencies often do prefer to settle. He stated that he has checked the case file and has found nothing that would indicate that DOJ had any significant objection to settling this case.

The DOJ senior counsel said he was not aware of any involvement in this litigation by Deputy Secretary Griles. He said he was aware, however, of one meeting where Mr. Griles met with an associate attorney general just before the settlement was reached. It was his impression that this meeting was primarily a briefing on the terms of the settlement.

The DOJ senior counsel stated that he attended the April 10, 2002 meeting in Mr. Griles' conference room with the California offshore litigants. He recalled that the DOJ Chief of Commercial Litigation and the DOJ commercial litigation attorney also attended, along with the SOL attorney and Mr. Griles. The DOJ senior counsel could not recall specific names, but he said he believes that virtually all of the litigants attended this meeting. He characterized this meeting as a "pre-settlement" meeting to see if everyone argued that a settlement was possible.

When asked, the DOJ senior counsel said that he was certain that Devon was not in attendance at this particular meeting. His recollection is that Devon had purchased drilling leases offshore California from another oil company after the meeting. He said it was his understanding that once Devon acquired these leases, Mr. Griles then became recused from any further involvement in this matter because he had a previous business relationship with Devon.

Patricia Morrison, Deputy Assistant Secretary for Land and Minerals Management, was interviewed regarding the Destin Dome litigation. Morrison, who has served in her current position since April 2002, explained that when she came to DOI, the litigation involving the Destin Dome was in its final stages. She said she initially became involved with this matter by working with the SOL attorney and MMS Director Johnnie Burton. Morrison advised that her

role was to assess the amount of actual damages to the plaintiffs as well as the methodology used for determining an appropriate amount for settlement.

Morrison stated that by the time she got involved in the decision to settle this litigation, the decision to settle had already been made. However, she said she does not know who made this decision. She stated that DOJ concurred with this decision and had the ultimate authority to approve any settlement action. Morrison acknowledged that someone within DOI would have likely "internally approved" the amount for settlement. She believes that this would have been Secretary Gale Norton.

Morrison was asked about a May 20, 2002 letter she sent to the Associate Attorney General, who was the Assistant Attorney General for DOJ's Civil division at the time. She had recommended in this letter that DOJ approve DOI's negotiated settlement with the Destin Dome litigants. Morrison said her letter had been drafted by the SOL attorney and had been vetted at DOI's senior staff level. She recalled that the Solicitor also reviewed and approved the settlement agreement, but she said she does not recall who else surnamed the letter. Morrison stated that she was not personally aware of any involvement by the Deputy Secretary in this action.

Thomas Readinger, Associate Director for Offshore Minerals Management, MMS, was interviewed. Readinger said he has been involved in the Destin Dome matter for several years. He stated that DOJ represented DOI in this matter and explained that the SOL attorney had actually negotiated the settlement in concert with MMS. Readinger stated that the decision to seek a negotiated settlement was made within DOI shortly after the lawsuit was filed in July 2000. While he said he does not recall who within DOI or MMS made the actual decision to settle, he did confirm that this decision had initially been made by the previous administration. He further stated that the current administration embraced the decision when it came into office. Readinger said the White House was particularly interested in this issue.

Readinger said Mr. Griles participated in the settlement by receiving frequent briefings on its status. He stated that the Deputy Secretary's involvement was not as a decisionmaker because he did not have any authority to approve the settlement. Readinger made it clear that the final authority to settle was DOJ's because DOJ Judgment Funds were being used. Readinger recalled that DOJ was not as keen to settle as DOI was and expressed that it was his belief that the White House was the driving force for settlement.

Readinger stated that he recalled meeting with Mr. Griles on the Destin Dome matter two to three times. He said these were all short meetings and consisted mostly of the SOL attorney providing an update of the litigation status. Readinger claimed his role at these briefings was to provide background information pertaining to offshore leasing.

Readinger stated that he was not aware of any previous association the Deputy Secretary had with any of the plaintiffs in this lawsuit. However, Readinger said he knew that while in the private sector, Mr. Griles had worked as a lobbyist and had represented clients in the oil and gas industry. He recalled one specific instance in which Mr. Griles represented oil companies on royalty issues before MMS in which he himself had been involved. Further, Readinger said he

had been acquainted with Mr. Griles when he served as the Assistant Secretary for Land and Minerals Management in the 1980s.

We requested that Readinger attempt to recall the actual matters and parties involved with Mr. Griles' representation before MMS as a lobbyist, and Readinger claimed that there were actually two matters. He said the first matter involved royalty relief issues associated with Shell's "Beta Unit" off the coast of California, and the second issue involved royalty relief issues for several different oil companies with production fields off California's coast. Readinger was unable to identify any specific oil companies involved in this particular issue.

Readinger said he was aware of several instances in which Mr. Griles informed staff that he was recused from a particular matter because of his previous business relationships. He specifically recalled that during a matter very similar to Destin Dome, involving leases off the coast of California, Mr. Griles had stated that he could not be involved. He said that in this instance, Devon, a former client of Mr. Griles, had purchased some leases from another oil company. He said that once the Deputy Secretary learned of Devon's involvement, he told Readinger and others that he was recused and could no longer participate.

Readinger said he could not recall exactly when this recusal took place. When presented with notations on Mr. Griles' calendar that Readinger had met with Mr. Griles on three occasions in January and February of 2002 regarding California, Readinger said the recusal would have been sometime after those meetings. Although Readinger could not specifically recall these three meetings, he said he did recall meeting with Mr. Griles regarding the California offshore leases.

Johnnie Burton, Director of MMS, was interviewed. Burton stated that the litigation involving offshore drilling leases in the Destin Dome was in the final stages when she arrived at DOI in March 2002. She acknowledged that she worked with Patricia Morrison and the SOL attorney on the finalization of the settlement. Burton stated that before her involvement, the decision had been made to settle the matter with the oil companies. She added that she agreed with this decision because it appeared obvious to her that a breach of contract had occurred.

Burton said that during her involvement in this matter, she was not aware of any particular involvement by Mr. Griles. She said she understood that the SOL attorney reported to the Deputy Secretary frequently to provide status briefings. Burton said she did not attend any of those briefings. She said she was told that the decision to settle had come directly from the White House.

Burton stated that the involvement of her staff in the Destin Dome litigation mostly concerned the valuation issue. MMS was trying to determine a fair dollar value for a settlement based on bonuses paid, rentals on leases, investment expenses, and the value of proven reserves. She said this was very complicated and difficult and that there was a very broad range of valuations, based on different assumptions.

Burton opined that the SOL attorney, as the lead negotiator, had all the data and felt that the settlement figure of $115 million was reasonable. She recalled that both the SOL attorney

and Morrison discussed this figure with her and that they all agreed it was within an acceptable range and represented a fair offer. According to Burton, DOJ had the final approval authority for the settlement, but she said she believes that Secretary Norton would have had to agree to any dollar amount as well.

Burton stated that MMS was also involved in the California lawsuit, where the basic issues were the same. She opined that any potential settlement would likely be some time off. Burton stated that this litigation had also been ongoing when she arrived. She said that shortly after she arrived at DOI, she learned that Mr. Griles had announced that one of his former clients had become involved in the litigation and therefore he was recused from any further involvement. She said she was not aware of what Mr. Griles' involvement had been with this matter before he recused himself.

Burton advised that she was also aware of one meeting that Mr. Griles was scheduled to attend on the California litigation. She said that since she did not attend that particular meeting, however, she does not know if he attended. She said that while she does not know for sure, she presumes that this particular meeting was scheduled before Mr. Griles had announced his recusal. Burton said she has not discussed the California litigation with Mr. Griles since his recusal and explained that because of Mr. Griles' recusal in this matter, she now reports directly to Associate Deputy Secretary James Cason regarding this litigation.

Mr. Griles' former business partner, Marc Himmelstein, president of National, was interviewed regarding this matter. He said his company had represented Chevron with the merger of Chevron and Texaco but claimed that Mr. Griles was not the firm's representative for Chevron. He said his company's lobbying filings had incorrectly listed Mr. Griles as Chevron's representative. He related that he has subsequently filed amendments to those filings listing the actual National representative of Chevron as another NES, Inc. official. Himmelstein said he has no idea why the first six checks written by Chevron were annotated "Attention: Steve Griles."

Figure 8

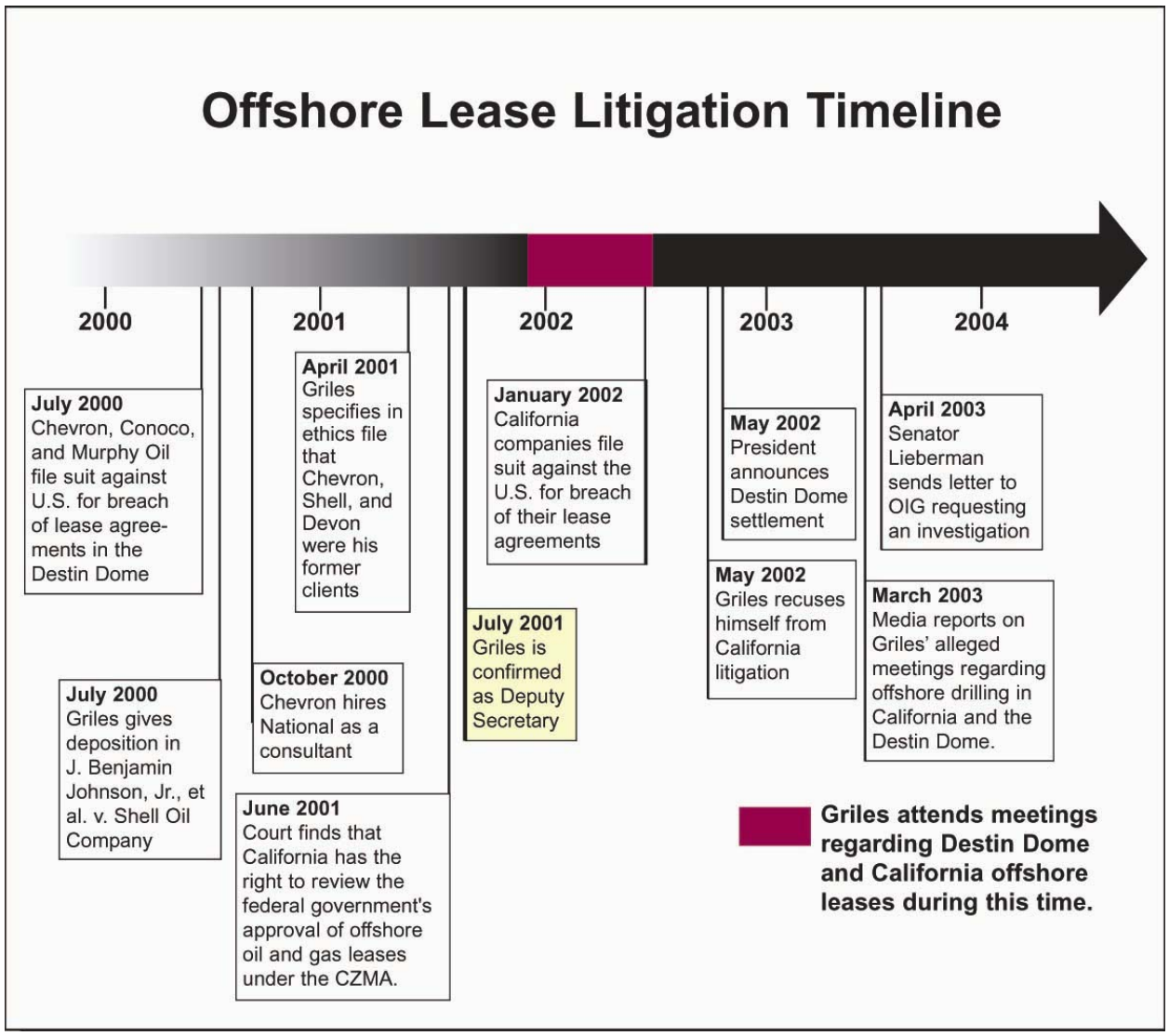
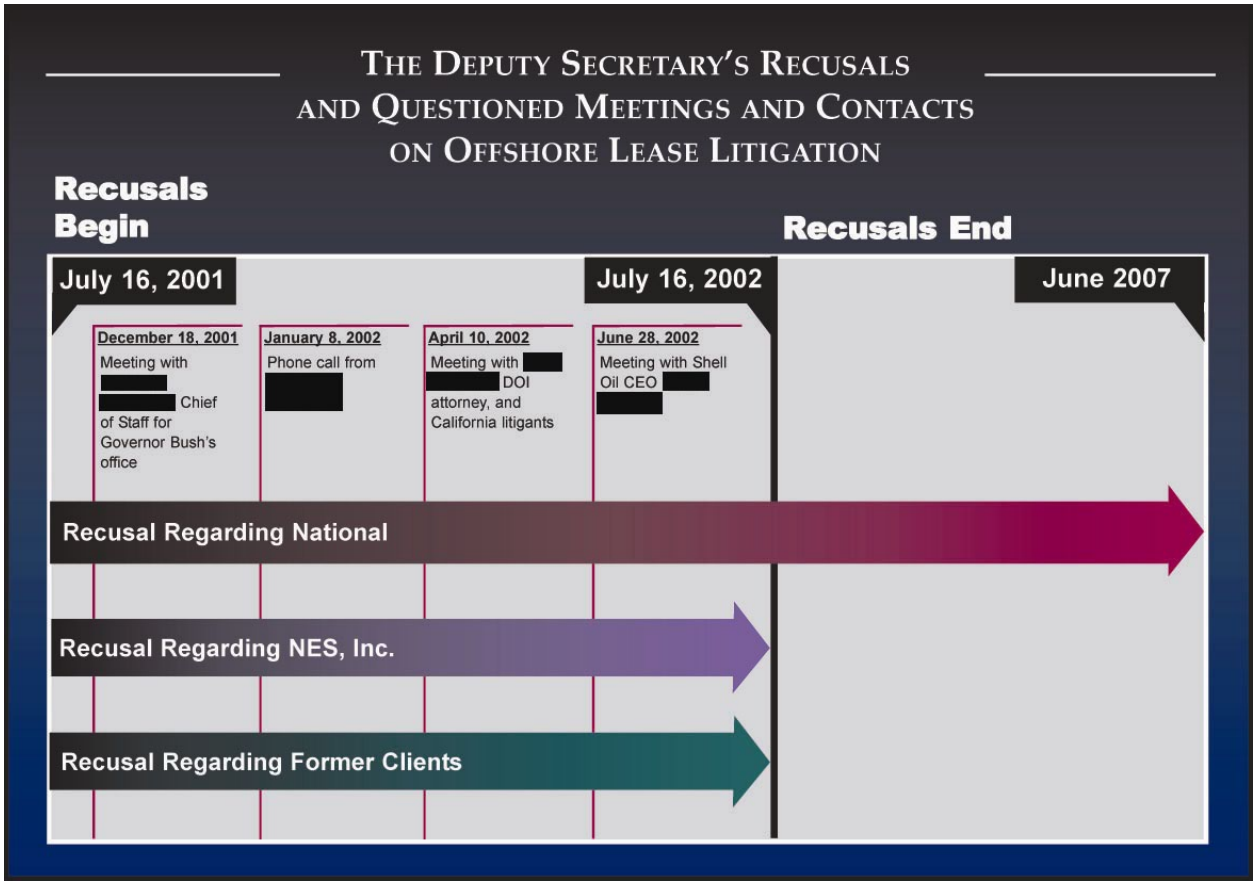

Offshore Lease Litigation Timeline
2000
2001
2002
2003
2004
July 2000
Chevron, Conoco, and Murphy Oil file suit against U.S. for breach of lease agreements in the Destin Dome
July 2000
Griles gives deposition in J. Benjamin Johnson, Jr., et al. v. Shell Oil Company
April 2001
Griles specifies in ethics file that Chevron, Shell, and Devon were his former clients
October 2000
Chevron hires National as a consultant
June 2001
Court finds that California has the right to review the federal government's approval of offshore oil and gas leases under the CZMA.
January 2002
California companies file suit against the U.S. for breach of their lease agreements
July 2001
Griles is confirmed as Deputy Secretary
May 2002
President announces Destin Dome settlement
May 2002
Griles recuses himself from California litigation
April 2003
Senator Lieberman sends letter to OIG requesting an investigation
March 2003
Media reports on Griles' alleged meetings regarding offshore drilling in California and the Destin Dome.
Griles attends meetings regarding Destin Dome and California offshore leases during this time.

Figure 9


THE DEPUTY SECRETARY'S RECUSALS
AND QUESTIONED MEETINGS AND CONTACTS
ON OFFSHORE LEASE LITIGATION
Recusals Begin
Recusals End
July 16, 2001
July 16, 2002
June 2007
December 18, 2001
Meeting with [redacted] Chief of Staff for Governor Bush's office
January 8, 2002
Phone call from [redacted]
April 10, 2002
Meeting with [redacted] DOI attorney, and California litigants
June 28, 2002
Meeting with Shell Oil CEO [redacted]
Recusal Regarding National
Recusal Regarding NES, Inc.
Recusal Regarding Former Clients

Clean Air Regulatory Matters

Background

Since his confirmation as Deputy Secretary, Mr. Griles has played an active role in this Administration's energy-related projects. In particular, he has contributed significantly to the White House Task Force on Energy Project Streamlining. The Task Force was created by Executive Order 13212 on May 18, 2001, and is housed at the Department of Energy for administrative purposes. The Council on Environmental Quality (CEQ) chairs the Task Force. Core members include the Departments of Interior, Agriculture, Energy, and EPA. Representatives from the Departments of Commerce, Defense, State, and Transportation, the Federal Energy Regulatory Commission; the Advisory Council on Historic Preservation; and the Nuclear Regulatory Commission often attend the Task Force meetings.

The Task Force lists its number one goal as expediting energy-related projects to provide for the increased production and transmission of energy in a safe, environmentally sound manner. Meetings of the Task Force are scheduled and the agenda is set by the CEQ. Meetings are either held at the CEQ's offices or at other federal government facilities.

Meetings on Clean Air Regulatory Matters

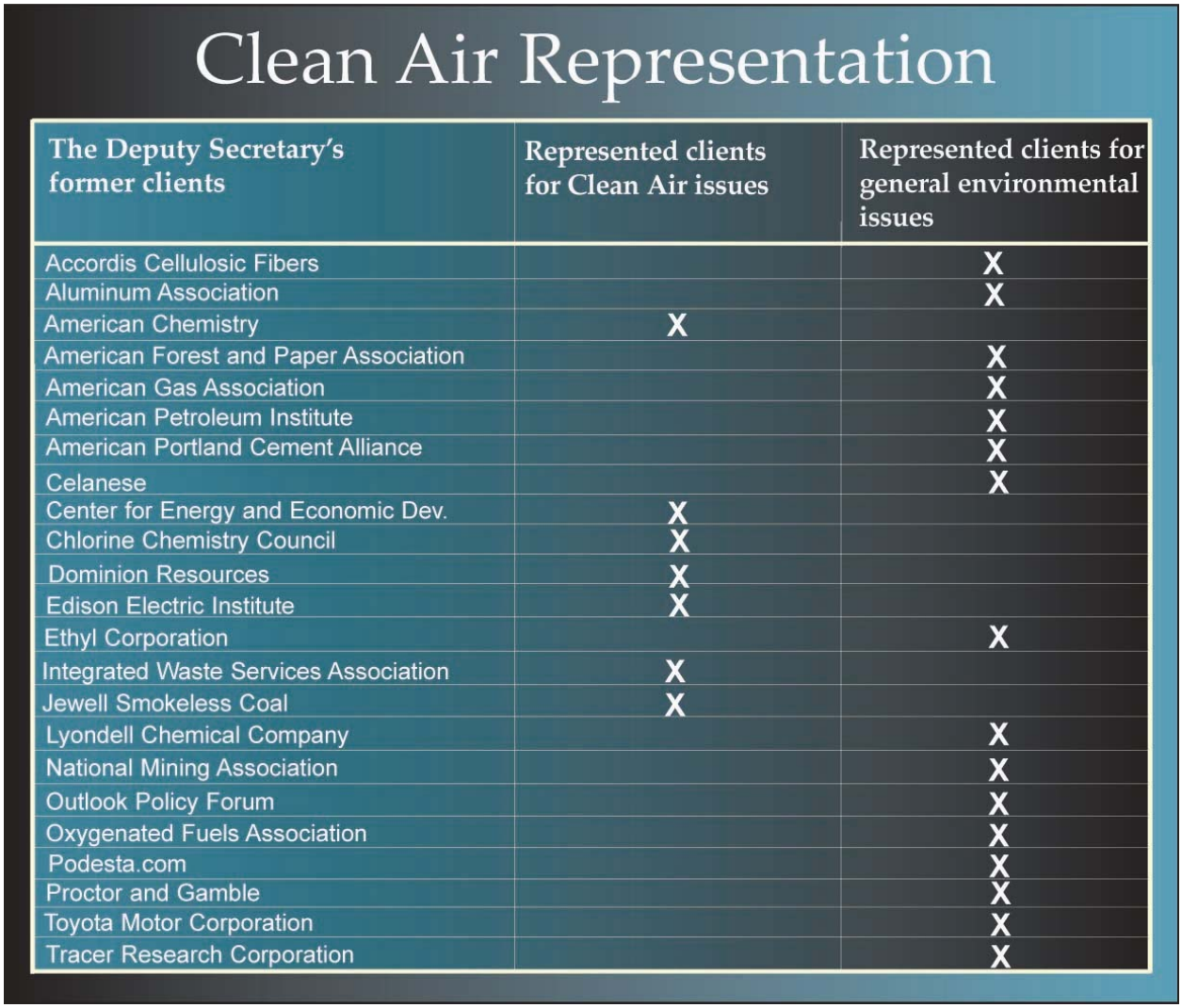
A review of the appointment calendars for the Deputy Secretary and other DOI officials revealed that from Mr. Griles' confirmation as Deputy Secretary on July 24, 2001, he has attended at least 37 meetings regarding Clean Air regulatory matters. The vast majority of these meetings involved the Administration's Clear Skies Initiative – its plan for reducing mercury, nitrogen oxide, and sulfur dioxide pollution from coal-burning power plants – and other contemplated changes to the 1977 Clean Air Act. Our investigation focused on seven of these meetings.

We focused our investigation on these seven particular meetings because we were able to determine that the Deputy Secretary potentially had control of the agenda and attendees and that he may have been meeting with his former clients or National's former and current clients. The one exception concerned two of these meetings that we determined did not involve a former client of either the Deputy Secretary or National; however, because they were notorious in the media, we felt compelled to conduct limited inquiries. These meetings involved Peabody Coal Co.

At the outset of this inquiry, we reviewed Mr. Griles' ethics file, which revealed that on his SF-278, he and National represented or formerly represented seven clients regarding clean air regulatory matters. Additionally, we determined that the Electric Power Research Institute (EPRI), whom National represented on clean air matters, became a client of National in July of 2001. All of these companies are listed in **Figure 10**.

We have also shown an additional 16 companies in **Figure 10** that, according to Mr. Griles' SF-278, were represented by Mr. Griles and/or National regarding "general environmental issues" – and who would have had an interest in any revisions to the Clean Air Act.

Figure 10



Meeting With the Electric Power Research Institute

According to media reports, on August 30, 2001, Mr. Griles met with former client EPRI to discuss clean air matters. Mr. Griles' calendar reflected the following: "07:30 AM - 08:30 AM: EPRI Briefing Mercury & [particulate matter] here."

When he was initially interviewed, Mr. Griles said EPRI was neither his former client nor a current client of National. He acknowledged that he attended the August 30, 2001 meeting and that it involved a general discussion of mercury and particulate matter. He said the discussion of mercury and particulate matter related to the Clean Air Act. A review of the Deputy Secretary's SF-278 revealed that he had not listed EPRI as a former client.

However, when we interviewed an officer of EPRI, he told us that EPRI was, in fact, a client of National from July 2001 to December 2002. The EPRI officer stated that shortly after retaining National, Marc Himmelstein arranged the August 30, 2001 meeting with Mr. Griles.

The EPRI officer said he did not know exactly how Himmelstein arranged the meeting and further related that Himmelstein did not attend. The EPRI officer described the meeting as informational and designed to explain what EPRI does to promote cooperative relationships between the public and private sectors. He said specific topics discussed at the meeting were air quality issues, such as health studies that EPRI had conducted on particulate matter, mercury control technologies, and health science issues. The EPRI officer stated that EPRI did not request any specific action of Mr. Griles at this meeting.

Mr. Griles' screeners, his special assistant and James Cason, were asked about this meeting. Neither had any recollection of it, and both were certain that they were not involved in scheduling the meeting. His special assistant added that Himmelstein has never contacted her to schedule any meeting with Mr. Griles. She further stated that she is certain that EPRI had not been a client of National before she and Mr. Griles came to DOI. She said that because she personally did the billings for National, she would have known if EPRI had been a client. However, she acknowledged that at some point – she could not recall exactly when – she noted that EPRI was listed on the list of clients that National routinely provides her. She estimated that this particular client listing would have been received by her around September or October of 2001.

During a subsequent interview, the Deputy Secretary reiterated that to his knowledge, EPRI was not a client of National, and he said he was certain it was not a client while he was employed by National. He said he believes this meeting was scheduled by his secretary. He said he is certain that if he had known that Himmelstein had called to schedule the meeting, he would not have attended. He added that to his knowledge, Himmelstein has never called to schedule any meeting with him.

During Mr. Griles' secretary's interview, she said she was aware that the Deputy Secretary had a number of recusals and that she had received a listing of clients from which he was recused. She said she could not be certain, but she does not believe that she had this listing during the first several months of Mr. Griles' tenure.

Mr. Griles' secretary said she did not specifically recall scheduling a meeting with Himmelstein and that if Himmelstein had called to schedule it, she would have remembered. She explained that while she does not personally know Himmelstein, she is aware that he is a former business associate of Mr. Griles. She claimed that to her knowledge, Himmelstein had never called to schedule a meeting with Mr. Griles.

When he was interviewed regarding this matter, Himmelstein insisted that he had never called anyone at DOI to schedule a meeting for one of his clients with the Deputy Secretary. Himmelstein said EPRI became a client of National in July of 2001 after Mr. Griles had already left the firm. He stated that he was not aware of the August meeting that EPRI had with Mr. Griles and that he was only aware of one later meeting that he personally arranged for EPRI with OSM Director Jeffrey Jarrett. Himmelstein speculated that someone from EPRI must have called to schedule the meeting. He opined that the meeting was scheduled before Mr. Griles' special assistant or Cason were employed by DOI in early August of 2001. Himmelstein stated that he has no idea who EPRI might have called but added that he is, on occasion, asked by

clients how to arrange meetings with Mr. Griles. Since he is a prohibited source at DOI, his typical response is to provide them with the Deputy Secretary's phone number or his special assistant's phone number. He added that he does not even know Mr. Griles' personal or direct phone numbers. Himmelstein said his contact with EPRI was an officer of EPRI.

The officer of EPRI was interviewed regarding this matter. He recalled that he had personally asked National to set up a meeting with DOI regarding public and private partnerships and to communicate the results of EPRI's research. He specifically recalled speaking with Himmelstein about setting up the meeting and said that, to the best of his recollection, Himmelstein or someone at National actually set up the meeting.

Meeting With Edison Electric Institute

Mr. Griles' calendar for September 10, 2001, contains the following entry: "02:00 PM – 03:30 PM 3-E Emmissions [sic] w/[name removed]/13 CEO's from [Edison Electric Institute] – W.H. Conference Center - 726 Jackson Place Eisenhower Room." According to Mr. Griles' ethics file, Edison is a client of National and its representation included "clean air, water, right away, and environmental."

Mr. Griles recalled that this meeting was set up by the CEQ as part of its Clean Air Act meetings and stated that he regularly attends these meetings as DOI's Deputy Secretary. He said he was not aware that EEI would be present at the meeting until he arrived. Mr. Griles explained that while he knew that the meeting would involve presentations by members (CEOs) of EEI, he did not know that EEI itself would be in attendance until he arrived at the meeting. He claimed that he did not actively participate, other than as an attendee, and that he did not speak to anyone from EEI.

A CEQ representative was interviewed regarding this meeting. He stated that he had arranged this September 10, 2001 meeting with an officer of EEI. The purpose of the meeting was to obtain industry comments and input regarding the Administration's Clear Skies Initiative. The CEQ representative also invited senior officials of DOI, the Department of Energy (DOE), and EPA to attend the meeting. He recalled that Mr. Griles attended on behalf of DOI.

The CEQ representative could not recall any specific discussions held during this meeting. He stated that he typically asks several questions at this type of meeting. He said his recollection is that it was an informational meeting, not decisional. He added that, contrary to media reports, this meeting did not involve the New Source Review, and there was no pending legislation discussed.

The CEQ representative had no further information regarding any meetings that Mr. Griles may have had with EEI representatives either before or after the meeting. He also could not recall the extent of Mr. Griles' participation during this particular meeting.

Mr. Griles' special assistant was asked about this meeting. She stated that she did not schedule it for Mr. Griles, and she did not annotate his calendar. She explained that typically CEQ meetings were scheduled through Mr. Griles' personal secretary. She said she was aware

that EEI was a previous client; however, she believed that since this was not Mr. Griles' meeting (i.e., he was not in charge of its scheduling or the agenda) it would not present a potential recusal problem for him. She added that if a similar circumstance were to arise in today's media environment, she would question the propriety of Mr. Griles' attendance.

During her interview, Mr. Griles' secretary was also asked about this meeting. Again, she stated that she had no specific recollection of scheduling it. She acknowledged that she has on occasion scheduled CEQ meetings for Mr. Griles. She added that she was not aware of any discussions about Mr. Griles attending a meeting that included EEI, and she said she does not believe that she had a listing of National's clients at the time of this particular meeting.

An attorney of EEI was interviewed regarding this meeting. He said that in preparation for his interview, he researched EEI's files and records pertaining to the meeting and spoke to several of the attendees. According to an EEI attorney, the CEQ representative invited EEI and its members to provide industry's viewpoint regarding the Administration's Multi-Emissions Policy and the Clear Skies Initiative. The EEI attorney said that as far as he could determine, the New Source Review was not on the agenda and the attendees he spoke with were unable to recall if Mr. Griles attended. However, the EEI attorney stated that it was generally understood that this meeting involved an interagency task force that would have included DOI, EPA, and DOE. He said that no one he spoke to had any recollection of Mr. Griles' participation at the meeting, and no one could recall meeting with Mr. Griles either before or after the meeting. The EEI attorney verified that EEI is represented by National.

Meeting With the American Gas Association

Mr. Griles' calendar contains an entry for August 8, 2001, "03:30 PM – 04:00 PM Eric Ruff re his breakfast mtg tomorrow w/[the American Gas Association]." There is no corresponding entry for August 9, 2001, indicating that Mr. Griles attended a meeting with the American Gas Association (AGA). When first interviewed, the Deputy Secretary said he once attended a meeting with AGA at the request of Secretary Norton, but he could not recall the exact date of this meeting. At this meeting, the AGA provided a briefing to DOI and DOE on the availability of natural gas. Mr. Griles said the meeting was purely informational; no business was discussed, and his role was simply as an attendee.

Mr. Griles acknowledged that National previously represented AGA pertaining to the Clean Air Act. According to Mr. Griles, this representation, however, did not involve natural gas issues. He further stated that he was not the actual representative for AGA. He said his former partner, Himmelstein, handled this account.

Mr. Griles' ethics file contains the following reference to AGA: "American Gas Association (NES, Inc., Client) Washington, DC – general representation on environmental issues w/Administration & Congress."

When interviewed, Eric Ruff, DOI Director of Communications, said he recalled a meeting with AGA regarding the Alaska National Wildlife Refuge. He could not recall the exact date of this meeting but conceded that it could have been August 8 or 9, 2001. According to

Ruff, Mr. Griles did not attend this meeting. Ruff said that he did, however, have a meeting with Mr. Griles prior to the AGA meeting. He said the purpose of his meeting with the Deputy Secretary was to discuss Alaska National Wildlife Refuge issues. Ruff said he was not aware that Mr. Griles had formerly represented the AGA.

An attorney of AGA was interviewed regarding any meetings between AGA and senior DOI officials. The AGA attorney stated that after researching AGA's files and speaking with key AGA officials, he was not able to identify any meetings between AGA and Deputy Secretary Griles. However, he said he believed that AGA officials met with Secretary Norton once in July or August of 2001 and once in August or September of 2003. He further stated that throughout 2002 and 2003, AGA officials met with the Assistant Secretary for Land and Minerals Management, Rebecca Watson; Deputy Assistant Secretary Patricia Morrison; and the Director of BLM, Kathleen Clarke.

The AGA attorney said his research reflected that AGA had a consulting contract with National for several years but that Mr. Griles has never represented the association. He said Himmelstein and another National employee represented AGA on Clean Air Act issues.

When we interviewed the Deputy Secretary a second time on this matter, he stated that he was wrong when he previously stated that he had attended a meeting with AGA and the Secretary. He explained that during the fall of 2003, he saw AGA representatives in the Secretary's office. He said he was then told that this was their first meeting with her.

Note: Mr. Griles' recollection of not attending a meeting with the AGA on August 9, 2001, is supported by the absence of any such meeting on his official calendar for that date.

Meeting With the American Petroleum Institute

Mr. Griles' calendar reflects that on October 9, 2001, he attended a meeting with the Secretary that included the American Petroleum Institute (API), his former client. His calendar for October 9, 2001, has the following entry: "01:00 PM – 02:00 PM, API/AEEG Meeting with the Secretary."

Mr. Griles said he does not have any recollection of attending this meeting. He stated that sometimes meetings that are on the Secretary's calendar are also included on his calendar. He said that in this case, it might be that either the meeting was cancelled or he simply did not attend it. Mr. Griles asserted that either way, he did not attend this meeting with the American Petroleum Institute (API). He acknowledged that API was a former client of National and that his ethics file reflects National's representation of API involved "general representation on environmental issues w/Administration & Congress."

The Secretary's calendar reflects that on October 9, 2001, she, Mr. Griles and Chief of Staff Brian Waidmann met with API representatives. Files in the Secretary's office regarding this meeting contain documents pertaining to the purpose of this meeting as well as the attendees from industry. The stated purpose of this meeting was for API and other members of the Alliance for Energy Economic Growth's (AEEG) Management Committee to brief the Secretary

on its position regarding the national energy strategy. These documents further identified industry attendees as API, the American Forest and Paper Association, the American Chemistry Council, the National Association of Manufacturers, the Nuclear Energy Institute, the American Portland Cement Alliance, EEI, the National Mining Association, the U.S. Chamber of Commerce, and the Association of American Railroads.

As previously noted, 6 of the 10 attendees were former clients of Mr. Griles and/or National. In addition to API, these former clients include the American Forest and Paper Association, the American Chemical Council, the American Portland Cement Alliance, EEI, and the National Mining Association (NMA).

We questioned Waidmann about this meeting, and he stated that he had no recollection of it.

An NMA officer was listed as the NMA representative for this meeting. When interviewed, he acknowledged that NMA is a member of the AEEG, which he described as a very disparate group of approximately 300 members representing industry, labor, and environmental groups. He stated that he could not recall attending this particular meeting; however, he said he knows Waidmann and said he has never met with him at DOI. Thus, if Waidmann attended the meeting, the NMA officer is certain that he did not attend.

The NMA officer said he has met with Secretary Norton on a "handful of occasions" but that he does not remember any particular details of any of those meetings. He recalled only one meeting with Mr. Griles, and that was a January 8, 2002 meeting about mining law reform (discussed later in this investigation).

We interviewed an officer from API. He recalled that he arranged the October 9, 2001 meeting with Secretary Norton. Attendees included several members of the AEEG and three to four DOI staff members. He said he thought that Mr. Griles may have attended the meeting but he could not be certain. According to the API officer, the purpose of the meeting was to inform DOI of AEEG concerns about the availability of energy in the future.

The API officer said he first met Mr. Griles at DOI but he could not recall the specific circumstances. He said that while he did not have any specific recollection of attending a meeting with Mr. Griles, he knows he has attended functions where he was present. He further stated that he was not aware that API had previously hired National and does not know what that representation would have entailed.

Second Meeting With the American Petroleum Institute

Mr. Griles' calendar also reflects another meeting with API on December 12, 2002. The calendar entry reads, "02:00 PM – 03:00 PM: Mtg w/[name removed] (API) re issue they are working on."

A Washington representative of API was interviewed regarding this meeting. He stated that he had arranged this meeting with Mr. Griles to discuss API's concerns about pending rule-making regarding spill prevention containment and control pertaining to oil wells. He said the

meeting took place at Mr. Griles' office and included DOI Assistant Secretary Rebecca Watson and two other individuals. According to the API representative, API was asking DOI to consider its concerns. He said that since the rule-making has not yet been finalized, he does not know if API was successful in addressing its concerns.

The API representative said he had not known Mr. Griles previously and he did not know that API had previously retained National.

Mr. Griles' special assistant was also questioned about this meeting. She did not have a specific recollection of scheduling it; however, she said she could not deny having done so. She pointed out that this meeting occurred beyond the 1-year period for Mr. Griles' former clients and that API was not a client of National at the time. Thus, she concluded that Mr. Griles' recusal would not have been "triggered" for this meeting.

Mr. Griles only vaguely recalled this meeting. He stated, however, that because it occurred outside of his 1-year restriction, it would not have presented a problem regarding his ethics agreement. Mr. Griles could not recall the exact dates, but he said he was aware that National's contract with API had terminated well before he was nominated as Deputy Secretary.

An API attorney was interviewed. He stated that he researched API's files and records and determined that API had last engaged National in 2000. He said this contract called for another employee of National, who was formerly with EPA, to assist in dealing with EPA on diesel fuel issues. He said there was no record that National had provided any lobbying or consulting services for API with DOI and there was no record that Mr. Griles ever personally represented API.

Meetings With Peabody Coal Co.

Mr. Griles' calendars reflect a number of meetings with Peabody Coal Co. (Peabody). Several of these meetings involved mining issues and are discussed in the mountaintop mining section of this investigation. However, the following two meetings with Peabody involved the Thoroughbred Power Plant and clean air issues:

- **August 30, 2001, 11:00 AM – 12:00 PM:** "Peabody Thoroughbred Power Plant, room 6119"

- **September 7, 2001, 05:00 PM – 06:00 PM:** "Peabody mtg re Thoroughbred Power Plant here room 6119"

While our investigation determined that Peabody is not a former client of Mr. Griles or a former or current client of National, we investigated these meetings because of their widespread coverage and notoriety in the national media.

Note: Peabody had proposed building the Thoroughbred Power Plant facility near the Mammoth Cave National Park in Kentucky. Kentucky coordinated the application process with the National Park Service (NPS). Initially, there were environmental concerns; however, these

concerns were apparently allayed, and Kentucky subsequently approved Peabody's application for the plant. Media reports highlighted a teleconference attended by Peabody and NPS in which Mr. Griles participated. The media reports specifically alleged that the Deputy Secretary's involvement was inappropriate and that he pressured NPS employees to go along with Peabody's proposal. Media reports identified an employee of Mammoth Cave National Park as being pressured by Mr. Griles.

During his interview, the employee of Mammoth Cave National Park acknowledged that Mr. Griles participated in a teleconference with Peabody and NPS. He said he did not believe that Mr. Griles asserted any pressure or influence one way or the other during the teleconference or throughout the entire application process for the Thoroughbred Plant.

The employee said in the case of the Thoroughbred Power Plant, he had coordinated Peabody's application with the NPS Air Resources Office in Denver, Colorado. The Air Resources Office ultimately concurred with approving Peabody's application.

According to the employee of Mammoth Cave National Park, the initial modeling that Peabody had performed indicated that there would be a large impact on air quality in the park. The employee said NPS later discovered that the Peabody model used 1990 National Weather Service files that had become corrupted when transferring them from one type of computer operating system to another. He said data files from other years that showed a much lower level of potential impact on the air quality at the park were then applied. He said his office did its own assessment of the data and that he was satisfied that the new information submitted by Peabody was indeed accurate.

The employee of Mammoth Cave National Park said that because of new technology used to reduce emissions, he did not anticipate there would be an increased problem with air quality at Mammoth Cave. He reiterated that he did not feel any undue pressure from Mr. Griles or anyone else in evaluating this application and he believes that appropriate DOI policies and procedures were followed in this matter.

Another employee of Mammoth Cave National Park who was mentioned in media reports, was interviewed. He said his staff reviewed potential impacts from the proposed plant and prepared reports on topics, such as mercury and acid deposition and ozone. He recalled that the initial proposal did not include a plan for emissions reducing equipment. He said that later, however, Peabody added "scrubbers" to the plan, thus providing a significant reduction in the projected emissions. According to this employee, Peabody's initial proposal also included a mistake in the computer modeling that had been used to predict the pollution impact of the plant on the park. He said the data on air movements initially showed a much greater impact, but once the data were corrected, it substantially reduced the negative impact.

The same Mammoth Cave National Park employee said NPS' initial review also indicated that there was a potential adverse impact on certain threatened and endangered species within the park. He said that consequently, NPS was required to notify FWS because of its responsibility for threatened and endangered species. His office prepared and sent a letter in late November or early December 2001 to FWS in Cooksville, Tennessee. He asserted that NPS had

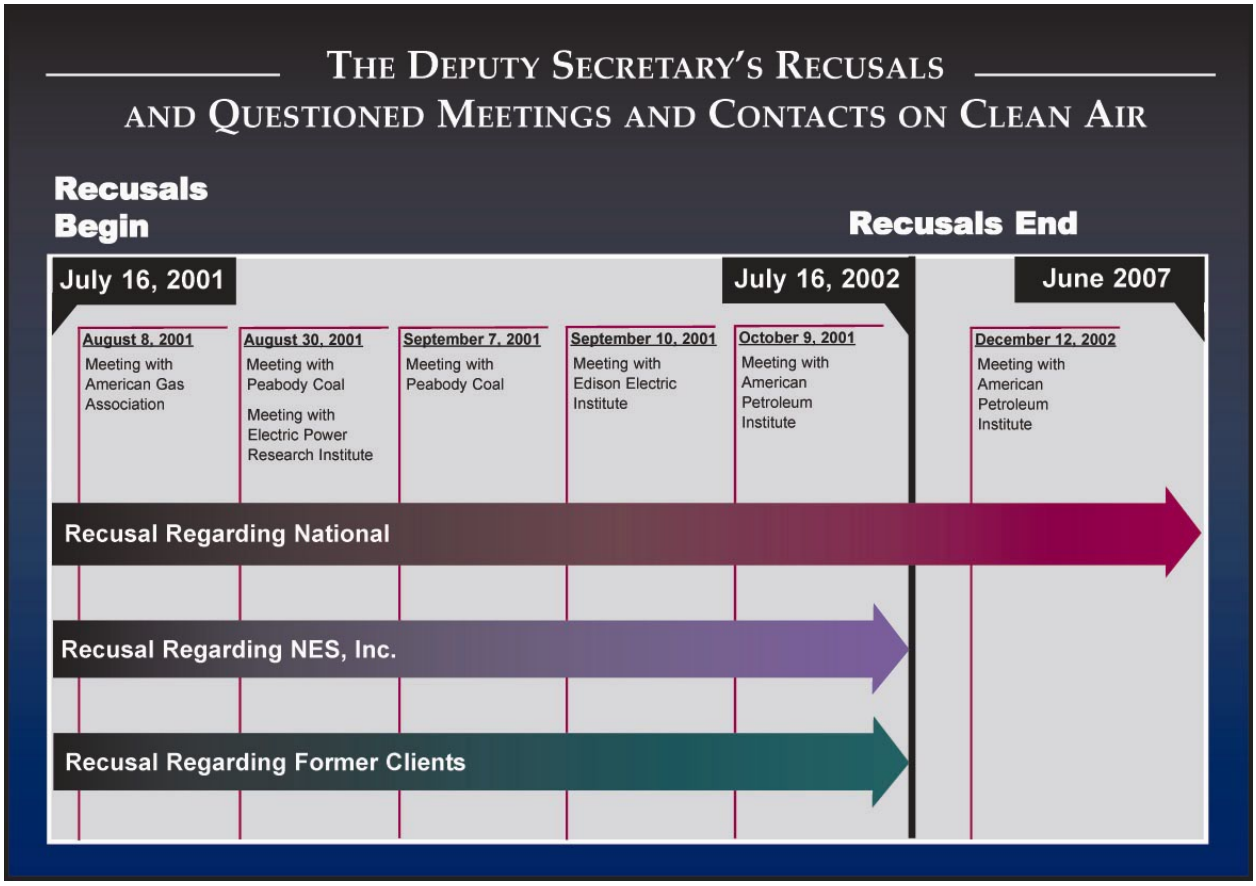
met its legal obligation when it alerted FWS to its concerns and added that it was then up to FWS to make an actual determination of possible effects.

The same employee stated that "people in Washington, D.C." looked at Peabody's proposal, along with the corrected emissions projection, and decided there was no longer a potential substantial adverse effect. He said he does not know specifically who these "people" were and did not know if Mr. Griles was involved in any way. He recalled participating in a conference call at one point with the first Mammoth Cave employee, NPS Director Fran Mainella, and representatives from Peabody. He was not sure if Mr. Griles was involved in this call. He added that he knew of no involvement by Mr. Griles in the process and had no knowledge of whether or not he had any previous relationship with Peabody.

This same Mammoth Cave employee said Peabody's request for a permit for the plant was ultimately approved by Kentucky. He related that the permit has since been appealed by both the Sierra Club and the Valley Club.

Deputy Secretary Griles was questioned about his involvement in this matter. He said he had assumed the role of facilitator for NPS and recalled his involvement in a telephone conference call but did not recall exactly why or how he came to participate in it. He said there were probably 20 to 25 people involved in the conference call, and he recalled that the NPS Air Quality office in Denver told Peabody representatives that their numbers concerning air quality models did not make sense. He said he had no further involvement and only knows from what he has heard that the final tests indicated that the power plant would not pose an air quality problem for NPS. Mr. Griles stated that neither he nor, to his knowledge, National have ever represented Peabody.

Figure 11


THE DEPUTY SECRETARY'S RECUSALS
AND QUESTIONED MEETINGS AND CONTACTS ON CLEAN AIR
Recusals Begin
Recusals End
July 16, 2001
July 16, 2002
June 2007
August 8, 2001
Meeting with American Gas Association
August 30, 2001
Meeting with Peabody Coal
Meeting with Electric Power Research Institute
September 7, 2001
Meeting with Peabody Coal
September 10, 2001
Meeting with Edison Electric Institute
October 9, 2001
Meeting with American Petroleum Institute
December 12, 2002
Meeting with American Petroleum Institute
Recusal Regarding National
Recusal Regarding NES, Inc.
Recusal Regarding Former Clients

Mining Issues

Even before accepting the position of DOI Deputy Secretary in July of 2001, Mr. Griles had an extensive private sector history of working on mining-related issues. As president of NES, Inc., Mr. Griles provided advice to companies and trade associations on environmental and energy issues, including several mining companies. In addition, prior to working for NES, Inc., Mr. Griles was the senior vice president for public, environmental, and marketing activities for the United Company – a natural resources company with operations in coal, oil, and gas.

Mr. Griles was also DOI's Deputy Assistant Secretary for Land and Minerals Management from 1983 to 1989, and prior to that, he was the Deputy Director of OSM from 1981 to 1983. Finally, before joining DOI in 1981, Mr. Griles was executive assistant director at the Virginia Department of Conservation and Economic Development, which oversaw mining activities in Virginia.

While his extensive background in mining is often cited as one of the very reasons Mr. Griles was qualified for his appointment as DOI Deputy Secretary, it has also been cited by public interest groups and the media as presenting great potential for conflicts of interest.

In particular, the national media ran several articles in 2002 and 2003 about Mr. Griles' alleged involvement in meetings with former mining industry clients. The focus of our investigation centered around three specific mining issues: a court-ordered EIS on mountaintop mining, a proposed rule change of the definition of "valley fills," and hard-rock mining. Mr. Griles was particularly involved with these three issues in his capacity as Deputy Secretary.

Background: Mountaintop Mining Environmental Impact Statement

On December 23, 1998, in the case *Bragg v. Robertson*, a U.S. district court mandated an EIS for mountaintop mining[33] as part of a settlement agreement.

Even though initially *Bragg v. Robertson* only involved the U.S. Army Corps of Engineers (COE), the ensuing settlement agreement called for the EIS to be completed by the COE along with OSM, EPA, and FWS, as well as West Virginia's Division of Environmental Protection. The purpose of the court-ordered EIS was "to consider developing agency policies, guidance, and coordinated agency decision-making processes to minimize, to the maximum extent practicable, the adverse environmental effects to waters of the United States and to fish and wildlife resources affected by mountaintop mining operations, and to environmental resources that could be affected by the size and location of excess spoil disposal sites in valley fills."[34]

While the settlement agreement in *Bragg v. Robertson* stated that the EIS for the mountaintop mining would be completed no later than 24 months after the effective date of the

[33] All types of surface coal mining in the steep terrain of the central Appalachian coalfields, as defined by OSM.
[34] The term "valley fills" refers to the area, typically a valley that has been filled with overburden, or land and rock, left over from the mining process.

settlement agreement,[35] a draft EIS was not actually published until May of 2003. A review of the court's docket disclosed that the NMA, which was a former client of the Deputy Secretary, is listed as an *amicus curiae*.[36]

Background: Rule Change for Defining Valley Fills

In November of 1999, the Martin County Coal Corporation ("Martin Coal") obtained a mining permit from the Commonwealth of Kentucky to undertake a surface mining project in Martin County, Kentucky. Martin Coal then applied to the COE for authorization under § 404 of the Clean Water Act and under the COE's Nationwide Permit 21 "to construct hollow fills and sediment ponds in waters of the United States."

On June 20, 2000, the COE authorized Martin Coal's project, by permit, to place mining-operations "spoil" from "excess overburden" in 27 valleys, filling in about 6.3 miles of streams. Martin Coal subcontracted this venture to Beech Fork Processing.

In August 2001, Kentuckians for the Commonwealth, Inc., (KCI) sued the COE under the Administrative Procedures Act, challenging this permit. KCI alleged that the COE had misinterpreted § 404 of the Clean Water Act. On May 8, 2002, a U.S. District Judge ruled in favor of KCI. However, the court did not enjoin the mining project because Beech Fork had, in the meantime, obtained adjacent property on which to place the mining operations "spoil" so that it no longer needed the COE permit.

In its lawsuit, KCI argued that "excess overburden" placed in the valleys, creating "valley fill," was not fill material as defined in § 404 of the Clean Water Act administered by the COE, but rather it was more narrowly defined as waste under § 402 of the Clean Water Act, which is administered by EPA. Simply stated, KCI argued that COE did not have the authority to issue the permit in question.

However, even prior to the KCI lawsuit, in April of 2000, the COE and EPA jointly filed a Federal Register Notice proposing to reword each of their respective definitions of "fill material" and "discharge of fill material" so that they would be consistent. On May 3, 2002, COE and EPA issued final rules, redefining "fill material," which finally made their definitions consistent. The proposed rule was fully vetted with DOI, which by letter dated August 4, 2001, provided favorable comments to the Federal Register Notice.

Just 5 days after the COE and EPA issued their final rule, the U.S. District Court declared, "The Corps Defendants are ENJOINED from issuing any further § 404 permits within the Huntington District that have no primary purpose or use but the disposal of waste, except dredged spoil disposal. In particular, issuance of mountaintop removal overburden valley fill permits solely for waste disposal under § 404 is ENJOINED." In August of 2002, the Fourth Circuit Court of Appeals overturned this ruling.

[35] No later than December of 2000.

[36] Latin term meaning "friend of the court." A person or entity that is not a party to the litigation but believes that the court's decision may affect their interest.

Background: Hard-Rock Mining

"Hard-rock mining" is a technique for extracting non-fuel metals and mineral deposits such as copper, gold, and silver from rock. The three basic steps of hard-rock mining are exploration, extraction, and beneficiation. Once located and extracted, the rock is crushed and the target mineral separated from the waste rock, sometimes by the application of chemicals to the crushed mineral ore. The by-products of hard-rock mining include arsenic, lead, and mercury.

In 1999, the Congress directed a review of the Federal Land Policy and Management Act (FLPMA), which governs hard-rock mining. During the last few hours of the Clinton Administration, DOI effected new regulations incorporating additional environmental protections. For instance, the new regulations required performance bonds to cover land reclamation costs and imposed strict standards to protect lands from toxic chemical drainage. However, the most controversial change was the replacement of the "prudent operator" standard with a more restrictive rule allowing DOI to deny a mining permit if it determined that mining in that area would cause "substantial irreparable harm" to an area of scientific, cultural, or environmental value.

On October 23, 2001, DOI Solicitor William G. Myers issued an M-Opinion[37] which, while retaining some of the non-controversial portions of the new regulations, eliminated the "substantial irreparable harm" standard and reverted to the earlier, more permissive, "prudent operator" standard. Myers asserted that DOI had no authority to prevent necessary and due degradation of public lands.

Note: A U.S. District Court recently upheld the use of the "prudent operator" standard in the regulation.

Two days later, on October 25, 2001, Secretary Norton sent a letter to Members of Congress advising them that BLM would soon issue a Federal Register Notice incorporating the Solicitor's new M-opinion, among other changes. She also asked them to consider making changes to the 1872 Mining Law a priority in the next session. She noted several reforms of the Mining Law of 1872, which she urged the Congress to consider. Finally, she announced her intent to invite a "dialogue" with the states, tribes, large and small mining operations, individual prospectors, the environmental community, financial institutions, and the public to address these potential reforms.

On October 7, 2003, the Bush Administration proffered its second M-Opinion on hard-rock mining, which was issued by Deputy Solicitor Roderick E. Walston because Solicitor Myers had recused himself from the matter, overturning a prior M-Opinion by Clinton Administration Solicitor John D. Leshy regarding mill sites.[38] Former Solicitor Leshy had interpreted the Mining Act as limiting mine operators to no more than one 5-acre mill site per

[37] An M-Opinion is a formal legal opinion written by the Solicitor. It is binding upon all DOI offices and may only be modified or over-ruled by the Solicitor, Deputy Secretary, or Secretary.

[38] A mill site is a parcel of non-mineral land that is used to support mining and processing of minerals, in part, by providing an area to dump tailings (waste rock) contaminated with arsenic, lead, and mercury.

mining claim. Reversing the Leshy decision, Deputy Solicitor Walston interpreted that provision to allow as many mill sites as necessary to support the mining operations.

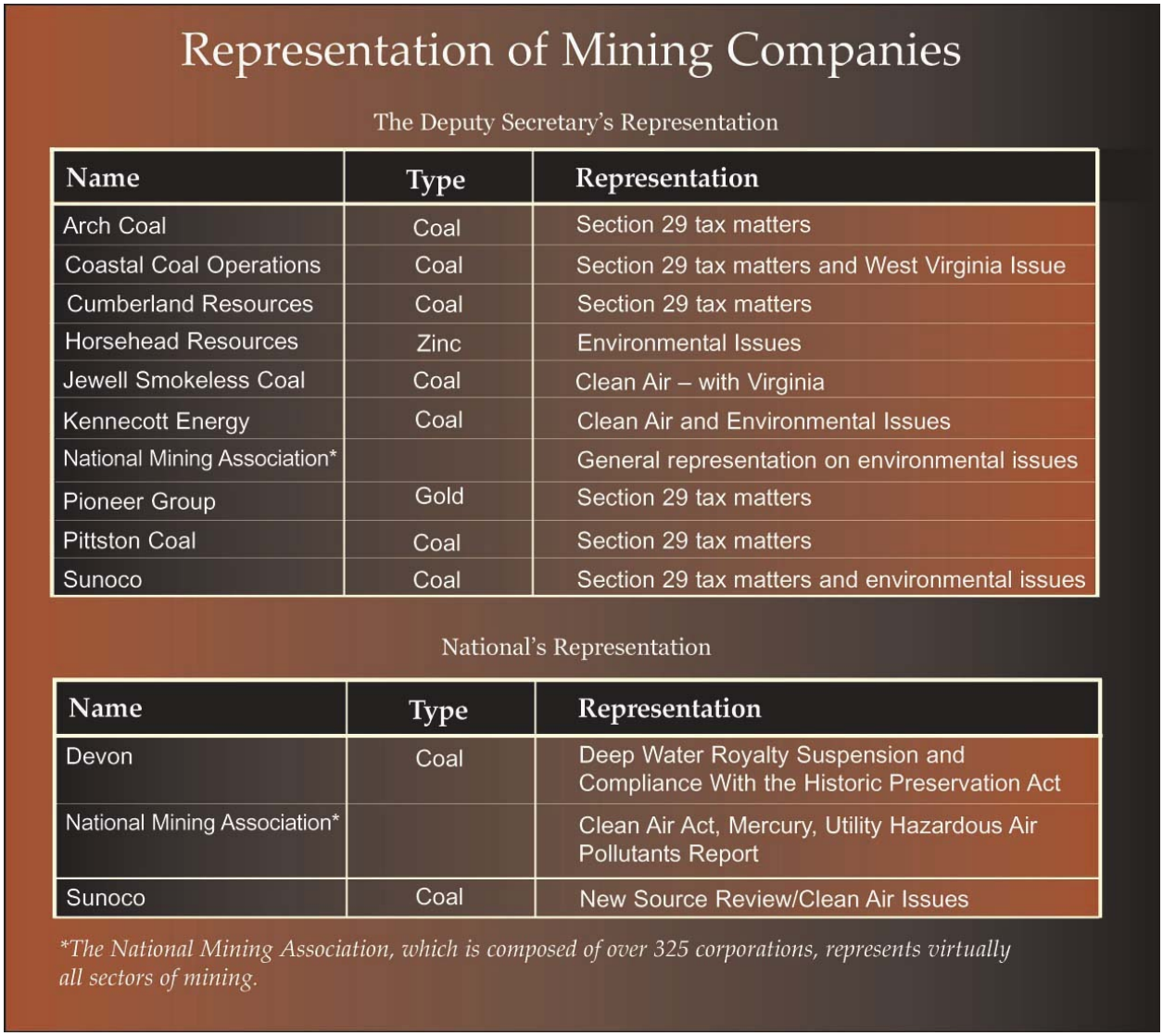
The Deputy Secretary's Meetings on Mining Issues

We reviewed Mr. Griles' SF-278, congressional lobbying reports, and other pertinent documents to identify the Deputy Secretary's previous representation of mining industry clients.

We determined that the Deputy Secretary previously represented 10 companies that are involved in mining and mining-related issues. Most of this representation involved tax credits relating to specific usage of coal, but his representation for three companies involved the Clean Air Act and "environmental issues." After being confirmed as Deputy Secretary, only three of his former clients continued their relationship with National. These clients were Devon, NMA, and Sunoco.

For the most part, National's representation of these three clients involves the Clean Air Act. Our investigation confirmed that neither Mr. Griles nor National have provided any representation to these clients regarding specific mining issues and in particular the hard-rock mining regulations, the mountaintop mining EIS, or the valley fill rule change. The clients that Mr. Griles formerly represented, and that National currently represents, are listed in **Figure 12**.

Figure 12



Representation of Mining Companies

The Deputy Secretary's Representation

Name	Type	Representation
Arch Coal	Coal	Section 29 tax matters
Coastal Coal Operations	Coal	Section 29 tax matters and West Virginia Issue
Cumberland Resources	Coal	Section 29 tax matters
Horsehead Resources	Zinc	Environmental Issues
Jewell Smokeless Coal	Coal	Clean Air – with Virginia
Kennecott Energy	Coal	Clean Air and Environmental Issues
National Mining Association*		General representation on environmental issues
Pioneer Group	Gold	Section 29 tax matters
Pittston Coal	Coal	Section 29 tax matters
Sunoco	Coal	Section 29 tax matters and environmental issues

National's Representation

Name	Type	Representation
Devon	Coal	Deep Water Royalty Suspension and Compliance With the Historic Preservation Act
National Mining Association*		Clean Air Act, Mercury, Utility Hazardous Air Pollutants Report
Sunoco	Coal	New Source Review/Clean Air Issues

**The National Mining Association, which is composed of over 325 corporations, represents virtually all sectors of mining.*

A review of Mr. Griles' daily calendars identified only nine specific meetings involving mining issues, and when he was initially interviewed, Mr. Griles acknowledged attending at least these nine meetings. However, Mr. Griles asserted that none of these meetings involved the valley fill rule change or hard-rock mining. Rather, he stated that the meetings he attended pertained only to the court-ordered EIS for mountaintop mining. He further stated that once EPA assumed primary responsibility for the EIS, he discontinued his involvement in these EIS meetings. Finally, Mr. Griles claimed that none of his former clients had attended any of these meetings. He was then questioned about his private sector involvement in mining issues, and he related that, as a lobbyist, he had never represented anyone on the specific issue of the mountaintop mining EIS, the proposed rule change involving the definition of valley fills, or hard-rock mining. He stated that his private sector representation of coal mining companies was only on tax issues.

Mr. Griles claimed that his attendance at the nine mining meetings noted on his calendar as "mountaintop mining/valley fills," in fact, refers only to the EIS. He went on to say that these calendar annotations included the term "valley fills" because it is an integral part of the EIS. He stated that his involvement in the valley fills rule was further limited because DOI was not a key player, like COE was.

Mr. Griles added that DOI provided comments to COE regarding the rule change, and he recalled that this issue was vetted with both OSM and FWS prior to DOI's official comments. While he said he feels DOI's final comments were a collaborative effort between the two bureaus, he acknowledged that FWS thought its viewpoint was not adequately expressed. To ensure that FWS' position was adequately represented and considered on its own merits, the Deputy Secretary claimed he personally faxed FWS' comments directly to the CEQ.

Note: Our investigation was not able to independently verify that said fax had been sent to the CEQ. As we were concluding this investigation, on January 7, 2004, the Los Angeles Times wrote an article entitled, "Federal Coal-Mining Policy Comes Under Fire." This article reported that FWS was highly critical of DOI's final position regarding the draft EIS and it reported that FWS employees complained that the Department failed to even consider FWS' position. Our investigation had determined that many rank and file FWS employees did not support the Department's position on the EIS. However, senior career and political appointees of FWS acknowledged that the Department's position was fully vetted with them and that they ultimately approved it. We found no evidence that the Deputy Secretary attempted to influence the senior political officials in any way.

As noted earlier, we focused this aspect of our investigation principally on meetings where the topic of discussion was either the mountaintop EIS, the proposed changes to the valley fill rule, or hard-rock mining. Since the preponderance of media allegations involved Mr. Griles' purported inappropriate contacts with his former client, NMA, we paid particular attention to any contacts we determined the Deputy Secretary had with said association. We also conducted limited inquiries of a number of meetings the Deputy Secretary attended that received media attention, even though we determined that none of his or National's clients were present at these meetings.

To assist in understanding how these three issues were being discussed and handled, both internally at DOI and externally with other agencies, we first interviewed a number of senior managers from OSM, FWS, COE , EPA, and CEQ. During our interviews, we sought out any evidence of the Deputy Secretary's involvement with these issues.

Jeffrey Jarrett, Director of OSM, and Glenda Owens, Deputy Director of OSM, were interviewed regarding the mountaintop mining EIS and proposed changes to the valley fill rule. They both described the Court's mandated EIS as "broad" and "overarching." They explained that unlike typical EISs, which are designed to address a particular project or specific issue, this EIS was mandated by the court to assess general mountaintop mining processes everywhere.

Jarrett said that since there was no particular project or specific issue involved, there was some confusion among the five key players, OSM, FWS, COE, EPA, and West Virginia, as to

how to proceed. He said that since the court had directed these agencies to collaborate, Mr. Griles took an active role in orchestrating this coordination. Jarrett said that, after considerable discussion, EPA decided to take the lead on the project and thereafter, Mr. Griles had virtually no further involvement.

Both Jarrett and Owens stated that while this EIS process was evolving, the COE and EPA had developed new rules defining "valley fills." Jarrett and Owens said that although DOI was not directly involved, it was consulted about the new definition. They both recalled that Mr. Griles was involved in numerous meetings and discussions regarding this critical definition.

The Chief of the Division of Technical Support, OSM, was interviewed regarding these issues. He stated that after Mr. Griles became Deputy Secretary, he took the lead in both of these issues. He characterized Mr. Griles' role as ensuring that DOI "spoke with one voice" regarding these issues. He stated that while Mr. Griles' took the position that both of these actions needed to be accomplished quickly, he did it in a manner that both OSM and FWS could live with.

The Chief of the Division of Technical Support explained that initially Mr. Griles was also serving as DOI's Assistant Secretary for Land and Minerals Management. In his opinion, this, coupled with the fact that the new OSM director was not yet on board, and with Mr. Griles' mining experience, justified the Deputy Secretary's active engagement in these matters.

The Chief of the Division of Technical Support also stated that there were some rather significant differences of opinion between OSM and FWS, particularly involving the EIS. According to him, this was another reason why Mr. Griles, as Deputy Secretary, needed to take an active role.

The Chief of the Division of Technical Support stated that it was actually his idea to include in the EIS a proposal to streamline the permitting process. His idea was to provide a "one-stop permitting process" through delegation to the individual states. He added that it was his belief that the court's intent was for the EIS to include a streamlining concept. He explained that when he briefed Mr. Griles on this issue, Mr. Griles agreed with his idea.

The Chief of the Division of Technical Support acknowledged that the mining industry was very interested in both the EIS and in the new definition of "valley fill." He said that since he participates with one of NMA's committees on mining policy, he knows that these issues were frequently discussed. He said he was not aware of any meetings between NMA or any individual mining company that Mr. Griles may have attended. He acknowledged that he knew Mr. Griles had previously represented the NMA and that it would not have been appropriate for him to meet with them. He added that he has been in meetings with Mr. Griles when Mr. Griles left the room because of a potential recusal issue. He said that while he was unable to specifically recall the dates or subjects of any of these meetings, he is certain that none of these meetings involved the NMA.

Marshall Jones, Deputy Director of FWS, was interviewed and stated that, in late 2001 and early 2002, he was FWS' Acting Director and was involved with these issues. Jones recalled at least one meeting with the Deputy Secretary and Owens from OSM. Jones said the meeting he

remembers was only informational and simply concerned moving the EIS process forward. Jones said he did not recall Mr. Griles attempting to influence the direction of the EIS at this meeting. He added that it was generally understood that Mr. Griles favored the mining industry's stance. Jones said he was well aware that the Deputy Secretary had previously represented mining companies; however, he said he was not aware of any specific company names. He also said he did not know that Mr. Griles had previously represented the NMA and he was not aware of any NMA involvement in these matters.

Jones said that after the new FWS director was confirmed, his involvement in the EIS matter diminished and he was not involved in FWS' final position on the EIS. However, he said he was aware that FWS was not completely satisfied with the EIS drafts, believing that they did not adequately consider wildlife habitat. Jones opined that the final EIS was more favorable to industry than it was to wildlife habitat.

The FWS' Chief of the Habitat Conservation Division was interviewed. He said he was involved in both the mountaintop mining EIS and the valley fill rule definition change. He stated that FWS' position regarding the definition of fill material was consistent with DOI's final position, which, in turn, is consistent with the final position of EPA. He conceded that some FWS employees may not have completely agreed with the final position; however, he said he did not consider their disagreement to be significant.

Regarding the mountaintop mining EIS, the FWS' Chief of the Habitat Conservation Division related that there were even more differences of opinion between FWS and OSM. He said the FWS was concerned that OSM had proposed that the focus of the EIS should be on streamlining the permitting process, rather than mitigating potential adverse environmental impacts. He said he attended a number of meetings with OSM on this matter and in one particular meeting Mr. Griles was present when OSM provided a briefing on its proposal to streamline. While Mr. Griles did not verbally support OSM, the FWS' Chief of the Habitat Conservation Division said it was apparent that Mr. Griles did favor the proposal. He also stated that Mr. Griles had asked for a list of FWS' concerns regarding the OSM proposal at the end of the meeting.

The FWS' Chief of the Habitat Conservation Division further stated that he had attended a number of other meetings regarding both the EIS and the "valley fill" rule change, where Mr. Griles was present. He said it was clear that Mr. Griles was actively engaged in both of these issues and appeared to be genuinely interested in moving them forward. He opined that the Deputy Secretary was actively engaged in these issues for "all the right reasons."

The Deputy Assistant Secretary of the Army for Civil Works was interviewed regarding the mountaintop mining EIS. He affirmed that his office was involved in this issue along with DOI and EPA. He explained that in this Administration, collaboration among departments is an absolute requirement. He said no single department, agency, or individual is allowed to make a final decision alone regarding an issue like this EIS.

The Deputy Assistant Secretary of the Army for Civil Works recalled that he had one meeting with Mr. Griles on this matter. According to him, COE was concerned about the

direction that it perceived DOI was heading with regard to the EIS. Specifically, COE disagreed with DOI that the EIS could or should be the vehicle to focus the Administration's energy streamlining efforts, or to make mountaintop mining policy. The Deputy Assistant Secretary of the Army for Civil Works said that consequently, he called Mr. Griles, whom he has known for several years, and asked for a meeting to discuss COE's concerns. He said he was not certain of the meeting's date but agreed that June of 2002 would have been the approximate time frame. He said that at this meeting, he presented COE's concerns to Mr. Griles and to OSM representatives. According to the Deputy Assistant Secretary of the Army for Civil Works, Mr. Griles said he was not aware of COE's concerns and pledged to assign someone to work with COE and EPA on these issues. He said he was not certain but he thought that Owens became that representative. He said COE assigned a person full time to this issue as well.

The Deputy Assistant Secretary of the Army for Civil Works said he has not personally met with anyone representing the NMA on this issue, but he knows that the NMA, as well as other groups – both in the public and private sectors, have had input into the process. He said he was not aware that Mr. Griles previously represented the NMA and he was not aware of any meetings between Mr. Griles and the NMA.

The Deputy Assistant Secretary of the Army for Civil Works said that while he was familiar with the rulemaking process where fill material was redefined under Section 404 of the Clean Water Act, he has neither been personally involved in this issue nor does he know whether or not Mr. Griles has been involved either. He added that it would be unusual for Mr. Griles to have had any direct contact with his staff on this matter. He said he would expect that Mr. Griles would have contacted him. As with the EIS, he claimed that the rulemaking process was one of collaboration with a number of government agencies as well as with the public.

We interviewed a former Assistant Secretary of the Army for Civil Works. He could not recall Mr. Griles' October 5, 2001 letter; however, he did recall meetings with Mr. Griles, EPA, and CEQ on these issues. He said he initiated most of these meetings because COE was under pressure to both accomplish the mountaintop mining EIS and to finalize its final rule defining valley fills.

The former Assistant Secretary of the Army for Civil Works said he specifically invited Mr. Griles to meetings because of Mr. Griles' expertise in mining. He said that to his knowledge, the NMA had neither lobbied the COE on these matters nor was he aware of any particular concerns of the NMA regarding these matters. He insisted that Mr. Griles never advocated any particular position regarding either of these issues, and he could unequivocally state that Mr. Griles never indicated that he favored a particular position.

Note: On October 5, 2001, the Deputy Secretary sent a "Dear Colleagues" letter to the CEQ, the Office of Management and Budget (OMB), EPA, and COE. Several senior officials mentioned this letter during the course of their interviews. A more detailed discussion of it follows later in this report.

EPA's Assistant Administrator for the Office of Water was interviewed regarding these issues. He recalled attending two senior-level meetings with Mr. Griles on the valley fills issue.

He recalled that one of the meetings took place at the Old Executive Office Building and included the head of CEQ as well as the head of COE. He characterized both meetings as "interagency consultation" where only general policy issues and general directions were discussed.

EPA's Assistant Administrator for the Office of Water could not recall ever meeting with Mr. Griles regarding the mountaintop mining EIS; however, when shown Mr. Griles' October 5, 2001 letter, he acknowledged that in one of the meetings, they may have discussed this issue. He said he was not actively engaged in the EIS matter and that his deputy primarily handled it.

When asked about the valley fills issue, EPA's Assistant Administrator for the Office of Water stated that this was a matter of significant interagency collaboration. He recalled that the matter was open for input from anyone concerned, including both industry and public interest groups. He said he did not have any specific knowledge regarding involvement by the NMA; however, he stated that he would be surprised if the NMA had not been very active on the issue. He also said he knew Mr. Griles had been a Washington lobbyist with clients in the energy sector, but he said he did not know specifically who those clients were.

According to EPA's Assistant Administrator for the Office of Water, the final rule on the valley fill definitions was thoroughly vetted with all concerned parties. He said he believed that all of the governmental agencies involved agreed with the results. He conceded that in this particular case, industry would most likely have been happier with the results than environmental groups.

Meetings With the National Mining Association

The Deputy Secretary's calendar reflected three meetings involving the NMA. These meetings were listed on his calendar as follows:

- **August 16, 2001, 11:30 – 12:30:** "Lunch with [name and title removed] of NMA"
- **November 29, 2001, 9:30 AM – 10:00 AM:** "[name removed]"
- **January 8, 2002, 7:00 AM – 8:00 PM:** "Representatives from NMA, including [removed name and title]; [removed name]; [removed name]; [removed name]; [removed name]; Ann Klee; and David Bernhardt"

During our investigation, we determined that there was one additional meeting between an NMA officer and the Deputy Secretary on August 9, 2001, for breakfast. We also determined that the November 29, 2001 meeting did not likely occur. Neither Mr. Griles nor the NMA officer have any memory of this meeting, and interviews with appropriate staff failed to provide evidence that they actually met on this date.

When he was interviewed about these meetings, the Deputy Secretary acknowledged that the NMA was a former client of his and a current client of National. However, Mr. Griles

insisted that his representation of the NMA was only on tax issues. The NMA officer also acknowledged that Mr. Griles had formerly provided lobbying and consulting services for the NMA and that National continues to represent the NMA. However, the NMA officer claimed that the nature of National's services has only been the Clean Air Act and not the Clean Water Act or any other mining issue.

August 9, 2001 Meeting

When the NMA officer was questioned about his August 9, 2001 breakfast with Mr. Griles, he stated that this took place soon after the Deputy Secretary was confirmed. He insisted that this meeting was purely social and did not involve any discussions of NMA issues or concerns.

When he was initially interviewed, Mr. Griles said he recalled having breakfast with the NMA officer shortly after his confirmation. When he was reinterviewed concerning this meeting, he stated that since the meeting is not noted on his calendar, he could not be certain if this meeting actually occurred. However, he stated that if he did have breakfast with the NMA officer, it would have been a purely social event without any discussion of NMA or DOI business.

August 16, 2001 Meeting

The Deputy Secretary stated that the lunch meeting on August 16, 2001, was also a purely social meeting with the NMA officer. Mr. Griles explained that he and the NMA officer were long-time personal friends, stemming from the time when the NMA officer was a former DOI associate solicitor in the 1980s. Mr. Griles said that he and the NMA officer met for lunch at the Main Interior Building and socialized for about an hour, and he insisted that no NMA business was discussed.

The NMA officer claimed that he met with Messrs. Griles and James Cason for sandwiches on the balcony of the Deputy Secretary's office on August 16, 2001. He admitted that the three spoke about whom he could discuss NMA issues with in the new Administration. He denied, however, that he attempted to promote specific issues or influence the Deputy Secretary or Cason on any pending political appointments. In fact, he stated, "Steve told me about the extent of his recusals and the parameters that the NMA must therefore follow when dealing with Interior."

Cason said he had no specific recollection of having lunch with Mr. Griles and the NMA officer on August 16, 2001, but he acknowledged that the NMA officer has been a long-time friend and he could not rule out the possibility. He said that if he had been present, however, he would have recalled if the NMA officer asked for any specific assistance from either Mr. Griles or himself.

January 8, 2002 Meeting

The third and final meeting between Mr. Griles and the NMA that we investigated was held in the Deputy Secretary's conference room at 7 a.m. on the morning of January 8, 2002. Mr. Griles; Ann Klee, counsel to the Secretary; and David Bernhardt, Director, Office of Congressional and Legislative Affairs, represented DOI, and five NMA representatives attended.

Mr. Griles recalled that the meeting's purpose was to inform the NMA that he could not personally meet with representatives on issues because of his recusals. Mr. Griles said he intended to introduce the NMA representatives to Ann Klee and David Bernhardt as the appropriate DOI officials who could meet with them concerning issues important to the NMA. Mr. Griles initially stated that he left the meeting after making these introductions; however, in a later interview, he said he was not positive of this fact.

When interviewed, the NMA officer claimed that this meeting was scheduled to allow his staff to meet DOI staff that would work on NMA issues involving any proposed revisions to mining laws. The NMA officer said he was certain that the Deputy Secretary left the meeting after introductions were made.

We interviewed Ann Klee, counsel to the Secretary. She recalled attending an early-morning meeting on January 8, 2002, with NMA representatives in Mr. Griles' conference room. She recalled that Mr. Griles and David Bernhardt, along with three NMA representatives, also attended.

Klee said she does not know who orchestrated this meeting but believes it was the result of a DOI review on hard-rock mining issues. She explained that Secretary Norton had sent letters to the Congress suggesting that hard-rock mining reform might be needed. In her letters, the Secretary had suggested that the Congress, as well as anyone else interested in this topic, should provide input. Klee said she believed that the NMA was interested in potential hard-rock mining reform and that this was why the meeting was held.

Klee said Mr. Griles told NMA representatives during the meeting that if they had any concerns or issues regarding potential legislative action, they should discuss them with Bernhardt. She said he was not certain but thought that Mr. Griles may have told them that they could contact her on any mining regulation issues. Klee stated that she did not recall anything unusual about the meeting. She said the meeting was not very detailed but rather a very general discussion about how to approach mining reform issues. She said she thought the meeting lasted for about 30 to 45 minutes and that Mr. Griles was in attendance the entire time.

We interviewed Bernhardt, Director, DOI Office of Congressional and Legislative Affairs. He recalled that on January 8, 2002, he attended a meeting with NMA representatives, the Deputy Secretary, and Klee. Bernhardt further recalled whom the NMA representatives were. He said he believed there were others present but could not recall their names. Bernhardt said this meeting was early in the morning and that it was held in Mr. Griles' conference room. He said he believes that Mr. Griles scheduled the meeting but is not certain of this fact.

Bernhardt stated that, in his opinion, the NMA representatives wanted to meet with Mr. Griles about hard-rock mining issues but that Mr. Griles instead referred them to Klee and himself. Bernhardt recalled Mr. Griles telling the NMA representatives that if they had any issues pertaining to the Congress, they needed to speak with Bernhardt and that any non-congressional issues should be referred to Klee. Bernhardt said he could not recall if Mr. Griles left after making the introductions or if he stayed for the entire meeting. He said he thought the meeting lasted less than an hour.

Bernhardt said he does not recall if Mr. Griles specifically mentioned his recusal regarding the NMA at this meeting, but he added that he is now personally aware of it as well as the fact that the NMA was a former client of the Deputy Secretary. Bernhardt explained that, in his opinion, Mr. Griles' recusal means that he cannot meet with the NMA regarding any substantive issue. Bernhardt stated that he did not consider this meeting substantive or decisional in nature. He stated that the NMA did not attempt to push any particular agenda or pursue any specific concern.

Bernhardt provided a copy of the Secretary's letter that was sent to several Members of Congress, dated October 25, 2001, regarding hard-rock mining. In this letter, Secretary Norton tells the Members that she wants to have open discussion with any party concerned about these issues. Bernhardt said he thought that the NMA may have been responding to this particular letter at this meeting. However, he explained that, at the time of this meeting, DOI was "not even close" to having a position on these issues and was simply attempting to obtain a consensus about whether or not hard-rock mining reform should even be pursued.

Bernhardt said he has had subsequent meetings with NMA representatives and stated that it was during these meetings that the NMA conveyed to him its position on these mining regulations. He added that since the January 8 meeting, Mr. Griles has neither been in attendance at any meeting with the NMA nor has Mr. Griles discussed the NMA and/or its positions on mining regulations with him. Bernhardt also said that the Deputy Secretary has never pressured him in any way regarding hard-rock mining reform.

Another NMA official was interviewed. She recalled attending the January 8, 2002 meeting at DOI. She said she does not recall who set up the meeting but believes that someone at NMA probably did. She explained that Secretary Norton had sent a letter to the Hill in October 2001 regarding potential hard-rock mining reforms. She said Secretary Norton had expressed in the letter that the Congress needed to initiate legislative action if any reform was to occur and that it was essential to obtain input from all interested parties. She said that, as one of the interested parties, NMA wanted to express its view.

According to the NMA senior vice president of communications, the meeting took place at 7 a.m. and included two NMA officers. She said Mr. Griles, Bernhardt, and Klee represented DOI. She stated that during the meeting, Mr. Griles introduced the NMA representatives to Bernhardt and Klee and told them that they were the DOI representatives that NMA should deal with on its issues. She said she believes, but is not certain, that Mr. Griles left the room after making these introductions. She stated that the meeting was very general in nature, that NMA

gave a presentation of data regarding mining, that no decisions were made and that no action items resulted from the meeting.

One of the NMA officers was also interviewed. He also recalled attending an early morning meeting at DOI on January 8, 2002. According to him, his office had requested the meeting in response to a letter that Secretary Norton had written to the Congress suggesting that current mining laws might need revision. He said NMA wanted to provide DOI with its input regarding any potential revision of these laws. He acknowledged that Mr. Griles had previously represented NMA as a consultant; however, he said he did not believe that simply requesting a meeting with Mr. Griles would be considered a conflict. He stated that since he had only been with the NMA for about 2 ½ years, he did not know whether or not Mr. Griles' representation of the NMA involved any hard-rock mining reform issues. The NMA officer said he remembers that Mr. Griles left the room after making introductions and that the meeting only lasted about 30 minutes.

Meetings With the Council on Environmental Quality

As noted previously, we conducted a limited inquiry of several meetings that received media attention, even though there were no indications that any former clients of the Deputy Secretary or current clients of National attended. Two meetings that Mr. Griles attended with the CEQ meet these criteria and are chronicled below.

September 27, 2001 Meeting

The CEQ Director for Natural Resources was interviewed. He said that Mr. Griles had called him to request a meeting at DOI on September 27, 2001, to discuss the proposed valley fill rule changes. According to him, one of the reasons for the meeting was that the KCI lawsuit had just been filed the previous month and that it dealt with this issue. He explained that the rule change had actually been proposed during the previous administration; however, it had not been finalized. He said that part of the reason for the delay was that COE and EPA could not agree on the definition of valley fills and how they would be regulated. He said that while he did not recall Mr. Griles advocating a particular position at this meeting, he knew that DOI was generally supportive of the EPA position. He said he could not recall if anyone else attended this meeting.

The CEQ Director for Natural Resources also stated that Mr. Griles mentioned the EIS at this meeting. He said that apparently, OSM had developed a proposal for streamlining the permitting process, and Mr. Griles thought it should be included in the mountaintop mining EIS. He said he was aware of Mr. Griles' October 5, 2001 letter regarding the EIS.

The CEQ Director for Natural Resources stated that the valley fill rule change was finalized in May of 2002, along the lines of EPA's position. He said this was also the position advocated by industry. He opined that industry favored this position because it diminished the amount of ambiguity that often, as in the KCI case, leads to litigation. He said he was aware that the NMA was interested in this rule change and that he had met with NMA representatives who

had expressed their position to him. He described the role of CEQ in both of these issues as serving as a mediator between multiple parties with conflicting opinions.

Mr. Griles recalled that at this meeting, he and the CEQ Director for Natural Resources discussed the impending October 9 meeting and the EIS in general. Mr. Griles said he did not believe that the matter of the valley fills rule change was mentioned. He reiterated his position that the EIS and the rule change are interrelated because valley fills are an integral part of mountaintop mining. However, Mr. Griles stated that the rule change was COE's responsibility, not DOI's.

Mr. Griles acknowledged that he also discussed with the CEQ Director for Natural Resources an OSM proposal to streamline the mountaintop mining permitting process. He said that OSM staffers had prepared a proposal that would allow states to issue the three to four permits now required at one time. Mr. Griles further acknowledged that our question refreshed his memory about an October 5, 2001 letter that he wrote to OMB, CEQ, COE, and EPA prior to the October 9 meeting. He said the purpose of this letter was to introduce the OSM streamlining proposal and to suggest that it might be included in the EIS. Mr. Griles maintained that he did not follow up on this proposal and to this date does not know whether or not it was included in the EIS. He claimed that he has not even seen the final draft EIS.

October 9, 2001 Meeting

When interviewed, the senior CEQ official recalled an October 9, 2001 meeting at his office that brought together all of the government agencies involved in the rule change for Section 404 of the Clean Water Act. He explained that this issue had been "flagged" by COE and EPA for CEQ involvement because there were differences of opinion between the two agencies. He stated that the role of CEQ in this matter was to assist the agencies in developing final language for the rule change.

The senior CEQ official recalled that the Deputy Secretary attended this meeting for DOI. He said that typically senior departmental officials – usually the deputy secretaries – attend meetings of this type once a rule change is close to being finalized. He also recalled that during this meeting Mr. Griles provided a briefing of OSM's Surface Mining Control and Reclamation Act as it pertains to mountaintop mining and valley fills. However, he did not recall Mr. Griles advocating any changes to the mountaintop mining EIS. He said that while he was aware of the EIS, he, personally, did not have any involvement.

The CEQ Director for Natural Resources said he had actually scheduled and attended the October 9, 2001 meeting on the valley fills rule with DOI, EPA, and COE. He said the main purpose of this meeting was to discuss the differences of opinion of all parties and attempt to reach a consensus on the definition. He said he was aware of Mr. Griles' October 5, 2001 letter recommending that the EIS also be discussed during this meeting and, as a result, this issue was discussed in some detail during the meeting.

According to Mr. Griles, CEQ requested the October 9, 2001 meeting with all of the parties involved in the court-mandated EIS in order to move the EIS forward. He explained that

the EIS had been due in 2000 but had languished primarily because of a lack of direction. He said the other parties involved included EPA and COE. Mr. Griles recalled that DOJ had also attended this meeting and he recalled asking DOJ if the EIS had to be completed. He said that when DOJ acknowledged that the EIS needed to be completed, he asked DOJ about the status of the EIS. He further recalled that the COE said that because of the long delay, it would need to go back and redo the data. Mr. Griles stated that after some discussion, EPA agreed to take the lead in the EIS. He stated that he had no further involvement in the EIS after EPA agreed to take the lead at this meeting.

Meeting With Beech Fork Processing

The media reported that Mr. Griles attended a meeting with Beech Fork that occurred at a time when the company was seeking government approval to continue its mining operation. As previously noted, Beech Fork Processing was managing the mining project in Kentucky that was the subject of the KCI lawsuit.

Mr. Griles' daily calendar contains the following entry for November 19, 2001: "[name removed], [name removed], [name removed], Beech Fork Processing."

An attorney at Jackson and Kelly, P.L.L.C., Charleston, West Virginia, was interviewed about this meeting. The attorney stated he represented Beech Fork Processing at the time of the meeting. He stated that Beech Fork scheduled the meeting with Mr. Griles as a broad informational meeting about its mining operation in Kentucky. He admitted that the mountaintop mining EIS was discussed during the meeting; however, he claimed that the proposed new definition of "fill material" was not. He said he could not recall if the actual lawsuit was discussed, and he said Beech Fork was not seeking any DOI action regarding the EIS or any other matter during this meeting. He further stated that Beech Fork was not a former client of Mr. Griles or a former or current client of National. He also said Beech Fork is not a member of the NMA.

The Deputy Secretary recalled that the Beech Fork meeting was informational and he emphasized that, regardless, DOI was not in a position to make any decisions or to assist Beech Fork in any way. Mr. Griles also stated that Beech Fork did not ask him to intervene with COE and that he did not subsequently discuss Beech Fork with anyone at COE. According to Mr. Griles, Beech Fork simply wanted to discuss Surface Mining Control and Reclamation Act issues pertaining to acreage standards. He added that Beech Fork has never been a client of his or National's.

Black Mesa Mine Meetings

The media reported heavily on a number of alleged inappropriate meetings that the Deputy Secretary attended that involved the Black Mesa Mine in Arizona. Peabody, an NMA member, owns two coal mines at Black Mesa, one on the Hopi Indian Reservation and the other on the Navajo Indian Reservation. Mr. Griles' daily calendars reflect his attendance at 11 meetings that specifically mention "Black Mesa." During our investigation, we determined that Peabody was

never a client of the Deputy Secretary or National. However, because of the notoriety of these meetings, we conducted a limited inquiry of them.

When interviewed, Mr. Griles acknowledged his attendance at these meetings and said that he probably meets with Peabody representatives at least once a month on this issue. According to the Deputy Secretary, the issue involved the securing of water to operate the mine. He explained that there are about 400 jobs at stake, impacting both the Hopi and Navajo Indian Reservations. Mr. Griles asserted that there was nothing wrong with his involvement in this issue and he considered it part of his responsibility as Deputy Secretary. He asserted that neither he nor National have ever represented Peabody.

OSM Director Jarrett and OSM Deputy Director Owens have been intimately involved in the Black Mesa issue. When interviewed, they both said Mr. Griles' participation in this matter is still ongoing. They described his role as coordinating efforts between OSM and BIA. They also said they are unaware of any meetings that Mr. Griles may have had with anyone else in the mining industry on this issue other than Peabody.

An NMA officer was questioned about the Black Mesa matter. He reported that he is aware of the issue; however, he was certain that NMA has not been involved. He verified that Peabody is a member of the NMA.

Other Mining Issues

During our investigation of mining meetings attended by the Deputy Secretary, two specific issues were developed that we thought deserved further inquiry. One of these matters concerned a "position paper" proffered to Secretary Norton by NMA that is alleged to have inappropriately influenced the outcome of the final rule on valley fills. The second matter concerned a letter written by the Deputy Secretary to several agencies that allegedly inappropriately brought pressure on them regarding their deliberations on the mountaintop mining EIS and the valley fills rule change.

National Mining Association Memorandum

Several national media reports alleged that an NMA officer provided DOI with a "courtesy copy" of NMA's position paper on the proposed valley fill rule change in early December of 2001. Allegedly, this position paper highlighted NMA's concerns and recommendations for the new definition of valley fills. The media reports suggested that much of what NMA wanted was eventually included in the final rule change.

When we searched the correspondence files of the Office of the Secretary, we found the NMA position paper referenced in the media reports. The Tasking Profile (DOI routing slip) attached to it was dated December 3, 2001, and indicated that the document had been hand-carried to DOI.

A correspondence specialist in the Office of the Secretary was interviewed regarding this matter. While she was not able to recall this correspondence specifically, she was able to

determine from the Tasking Profile that she had, in fact, logged it in. She was further able to determine that the document was hand-carried to DOI and that it was sent to DOI from an NMA officer. She explained that the document did not, and would not have, come directly to her. She said that typically it would be received by the mailroom and routed to her. She speculated that this correspondence must have arrived in an envelope with his name and address on it. Although she searched her files, she was unable to find the envelope.

An NMA officer was questioned regarding this matter. He claimed that although he had been asked about it by reporters, he had never actually seen a copy. He was then shown a copy of the document along with the internal DOI routing slip that had been attached by the correspondence unit. After examination, he acknowledged that he had prepared the legal review labeled "privileged and confidential" and that it had been made available to NMA members. He stated that the document deals with litigation matters pertaining to valley fills and the definition of fill material. However, he denied any knowledge of the origin of the first page of this document, which is entitled, "Preamble Discussion for EPA/Corps Definition of Fill Material, Final Rule."

The NMA officer said he could not explain how or why the document had been forwarded to DOI. He said NMA typically would send this type of information to DOI via a formal letter. He said he could not rule out the possibility that he might have informally sent this document to DOI; however, he said he has no recollection of doing so.

When interviewed, an NMA representative stated that she was unable to verify whether these documents were actually prepared by NMA. She said she researched NMA's word processing and administration files and could not find any evidence of its creation or dissemination to DOI.

Another NMA officer was questioned regarding this document. He said he could not recall this document being generated by NMA or provided to DOI. When shown the correspondence, he said that he had never seen it before and, based on the typeface on the document, he did not believe that it had been generated by NMA.

The Deputy Assistant Secretary of the Army for Civil Works was interviewed regarding this document. He said he was not aware of any documents that NMA may have provided to COE – or to any other government agency – articulating its concerns or desires. He was then shown the specific document in question, and he stated that it did not look familiar to him and he does not believe he had seen it previously. He added that the use of a "preamble" in this document is familiar to him because a "preamble" was also used in the mountaintop mining EIS.

The Chief of the Division of Technical Support, OSM, was asked about any correspondence received by OSM from NMA regarding its concerns and recommendations on the definition of valley fill material. He acknowledged that such a document had been forwarded to him from Secretary Norton's office. He then produced a copy of this document from his file. This document was identical to the document provided by a correspondence specialist in the Office of the Secretary, except the Chief of the Division of Technical Support's copy had a photocopy of the NMA officer's business card attached to it. Additionally, the Chief of the

Division of Technical Support had prepared a note, dated February 11 (no year) that no action was required of OSM regarding the NMA correspondence.

When interviewed about this matter, Deputy Secretary Griles stated that he was not aware of the NMA document and had only learned about it through media reports. He asserted that neither the NMA officer nor anyone else from NMA had ever given him anything to present to Secretary Norton. He added that he knew of no reason why NMA would "secretly" pass documents through him or anyone else. However, the Deputy Secretary also expressed his opinion that the NMA had every right to provide the Secretary with information regarding its position on anything pending before the Department.

Mr. Griles' Allegedly Inappropriate Mining Letter

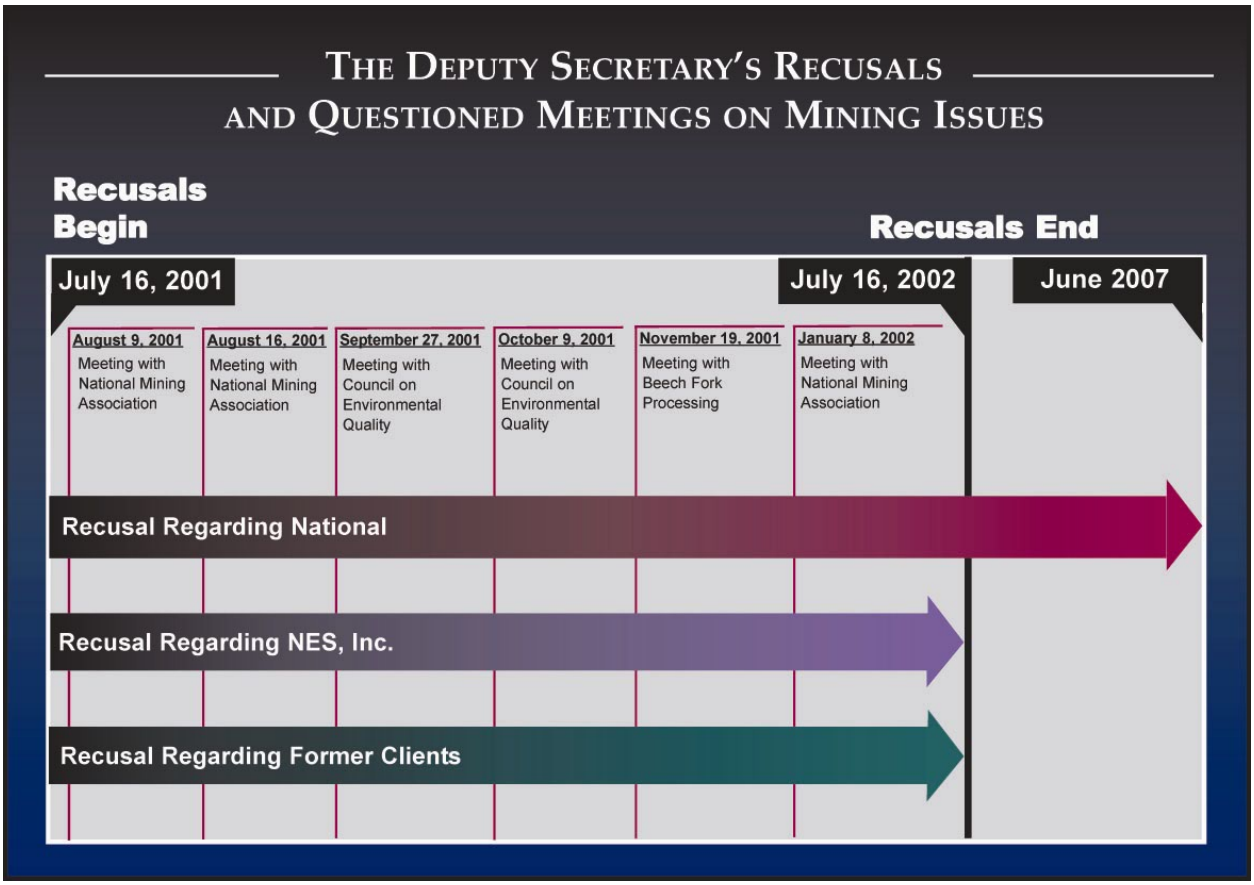
Additionally, we confirmed media reports that on October 5, 2001, Mr. Griles sent a "Dear Colleagues" letter to the CEQ, OMB, EPA, and COE on the subject of "Mountaintop Mining/Valley Fills Issues." The letter discusses the court-mandated EIS and asserts that the EIS "must consider and recommend solutions to well-documented, significant impacts that will allow steep slope Appalachian coal mining to proceed in an environmentally sound manner."

The Deputy Assistant Secretary of the Army for Civil Works was interviewed about this matter. When asked if he was aware of a letter that Mr. Griles had written to COE, EPA, and CEQ dated October 5, 2001, regarding the EIS, he explained that he did not assume his position until November of 2001. However, after reviewing the letter, he reported that it looked familiar, and he said that the letter, in fact, described some of the DOI positions that COE disagreed with. He speculated that this letter may actually have been at least a partial catalyst for his requesting the June 2002 meeting with Mr. Griles.

At our request, the staff from EPA's Office of Water researched its correspondence files regarding Mr. Griles' October 5, 2001 letter and verified that the letter had been received at EPA. However, no response was sent since the letter referred to an impending October 9, 2001 meeting and no further action was deemed necessary.

When interviewed, Mr. Griles said OSM staff had prepared a "streamlining" proposal that would allow individual states to issue the three to four permits that are now required in the mining permit process. He said this "streamlining" proposal could be accomplished by one agency, thus eliminating additional permit requests and the involvement of numerous agencies. Mr. Griles acknowledged that around October 5, 2001, he wrote a letter to OMB, CEQ, COE, and EPA. He stated that the letter's purpose was to introduce the OSM proposal and to suggest that it might be included in the mountaintop mining EIS. He also stated that he wanted to have the opportunity to brief these officials during the October 9 meeting that had been scheduled by the CEQ to discuss the valley fill rule change. Mr. Griles denied that the letter's purpose was to pressure the other agencies.

Figure 13


THE DEPUTY SECRETARY'S RECUSALS
AND QUESTIONED MEETINGS ON MINING ISSUES
Recusals Begin
Recusals End
July 16, 2001
July 16, 2002
June 2007
August 9, 2001
Meeting with National Mining Association
August 16, 2001
Meeting with National Mining Association
September 27, 2001
Meeting with Council on Environmental Quality
October 9, 2001
Meeting with Council on Environmental Quality
November 19, 2001
Meeting with Beech Fork Processing
January 8, 2002
Meeting with National Mining Association
Recusal Regarding National
Recusal Regarding NES, Inc.
Recusal Regarding Former Clients

Other Related Findings

As we were concluding our investigation, we learned through media reports that on January 8, 2004, Deputy Secretary Griles was the keynote speaker at the Roundtable Summit of the West Conference in Phoenix, Arizona. Several newspapers noted that he was interrupted by environmental protesters during his speech and that the conference was sponsored by a number of energy-producing companies, including AGA, Kennecott Energy, and Arch Coal. As noted earlier, all three of these companies are former clients of the Deputy Secretary, and AGA is a current client of National.

Our investigation determined that the event was also connected to a political fund raiser that occurred on January 7, 2004, the day before Mr. Griles was to attend. The fundraising aspect of the event was highly publicized. However, Mr. Griles' participation was limited to the roundtable conference and as keynote speaker at the conference's luncheon on January 8, 2004. The conference was billed as non-partisan and included environmentalist groups. It was cosponsored by the Western Business Roundtable and the U.S. Chamber of Commerce. All paid registrants of the conference were invited to the luncheon. While various businesses, such as Kennecott, Arch Coal, and AGA, were paid sponsors for portions of the conference, we determined that there were no sponsors for the luncheon at which Mr. Griles spoke. The luncheon was paid for by the Western Business Roundtable.

Note: According to its Web site, the Western Business Roundtable is a non-profit business trade association composed of CEOs and senior executives of organizations doing business in the West. Its members are involved in a broad range of industries, including agricultural products, accounting, chemicals, coal, construction and construction materials, conventional and renewable energy production, energy services, engineering, financial services, internet technologies, manufacturing, mining, oil and gas, pharmaceuticals, pipelines, telecommunications, and public and investor-owned utilities. The stated purpose of the Western Business Roundtable is "to protect the quality of life in our region, recognizing the need for both a safe and clean environment and a healthy economy." Its current chairman is the president and CEO of Kennecott Energy.

When Mr. Griles was interviewed regarding his participation in the conference, he said he attended as a surrogate because Secretary Norton had been invited but was unable to attend. Mr. Griles said he understood that the Western Business Roundtable was composed of business entities involved with energy development. He asserted, however, that he was not aware that his former clients, Kennecott, Arch, and AGA, were paid sponsors of this event. Mr. Griles added that to his knowledge, no company had sponsored the luncheon at which he spoke, and it was his understanding that any paid registrant of the conference could attend the luncheon. He further noted that five or six environmental groups were conference attendees and attended the luncheon.

The Deputy Secretary said that due to the broad, all-inclusive nature of the conference and his limited role as a keynote speaker, he never considered that his attendance might be construed as inappropriate. He said Secretary Norton has typically attended these events, along with other senior government officials.

Mr. Griles acknowledged that he had learned that a political fund raising event had been connected to this conference. He said a representative from the Western Business Roundtable had personally organized the fundraiser to occur the day before the conference. Mr. Griles added that he did not attend, nor was he ever scheduled to attend, the fundraiser. He explained that, in fact, he was on official travel status earlier in the week, and he did not arrive in Phoenix until almost midnight on Wednesday, the day before he was scheduled to speak.

The representative for the Western Business Roundtable was also interviewed, and he corroborated Mr. Griles' account of the luncheon invitation. He claimed that media accounts that luncheon attendees paid $5,000 to hear Mr. Griles speak were false. He noted that not only were all paid conference registrants invited to attend the luncheon, but other groups, including the media and environmental groups, were also allowed to attend at no cost.

The Deputy Secretary's special assistant was interviewed about this matter. She confirmed that Mr. Griles was invited as a surrogate after Secretary Norton had declined due to a scheduling conflict. As one of Mr. Griles' screeners, she also asserted that there was no reason to believe that his attendance would in any way be considered inappropriate. She said she had not discussed the propriety of Mr. Griles participation with anyone, including the Department's Ethics Office. However, we subsequently learned that she had, in fact, discussed his attendance by phone with the Ethics Office on January 7, 2004. When we later confronted her with this inconsistency, she explained that the purpose of her call was merely to determine whether or not the Deputy Secretary was required to complete any departmental forms regarding his attendance. She said she was told that no forms were required because the event is considered a widely attended gathering, which is exempt from any such requirement.

Arthur Gary, Deputy Director, DOI Office of Ethics, was interviewed regarding this matter. Gary said that on January 7, 2004, he received a phone call from Mr. Griles' special assistant that Mr. Griles was enroute to a conference in Phoenix. She told him that the Deputy Secretary would be the keynote speaker at a luncheon and that the conference was sponsored by the Western Business Roundtable.

Gary said he was familiar with this conference and believed that Secretary Norton had previously attended as a keynote speaker. Gary said the purpose of Mr. Griles' special assistant's call was to determine whether the Deputy Secretary needed to file forms allowing him to participate in the conference and the luncheon. Gary said he told her that this event would be classified as a "widely attended gathering," so no special permission or forms were required.

Assessment of Ethical Recusal Process at DOI

Assessment of the Ethical Recusal Process at the Department of the Interior

In 1999, the OIG conducted an evaluation of the Ethics Office at the request of the former Assistant Secretary for Policy, Management and Budget. At the conclusion of its evaluation, the OIG determined that the Department's Ethics Office was underfunded, understaffed, lacking sound leadership, without a computer system, and files were disorganized with little or no documentation of actions or advice.

During our evaluation, the OIG found both evidence of and the perception that the Department's leadership did not take ethics seriously. The Assistant Secretary articulated concern about this failure and signaled his intention, at the conclusion of our evaluation, to implement the suggestions that emanated from the evaluation. Only one of the suggestions was actually acted upon before the Assistant Secretary's departure – to replace the head of the Ethics Office with a highly-qualified candidate from outside the Department. Unfortunately, this was not actually accomplished before the change of Administration, leaving in place the non-selected head of the Ethics Office, who had openly expressed dissatisfaction with her non-selection. This was the person in place as the Designated Agency Ethics Official (DAEO) [39] when the present Administration arrived.

Shortly after the arrival of the present Administration, the Inspector General brought to its attention the deficiencies in the Ethics Office that had been found during the 1999 evaluation. Little changed, however, until September 2001, when the Department announced that a Senior Executive Service attorney from within the Department's Congressional Affairs Office would be reassigned to serve as head of the Ethics Office, effective December 2001. While this action satisfied one of the OIG's recommended criteria for filling the position with a Senior Executive Service employee, it failed to meet a second, and perhaps the more important, criterion – that of being an experienced ethics professional. This attorney had virtually no ethics experience when her reassignment was announced. The announcement also left the now-lame-duck DAEO embittered – and in place – for another 4 months. She occupied this position until December 2001, by which time the majority of this Administration's departmental appointees had been confirmed and were in place.

The former DAEO held a curious view of her position and responsibilities. She said that her office made no legal decisions, referring all legal questions, instead, to a senior career attorney in the SOL. The attorney, on the other hand, viewed his role in ethics matters, especially involving recusals, more as that of a "sounding board." His focus was on violations of the law or rules, being of the view that "appearances" are subjective and best left to the judgment

[39] The DAEO is a statutory designation pursuant to 5 C.F.R § 2638.201, which grants the authority to manage a federal ethics program, provide ethics advice, and delegate authority to provide ethics advice within the agency or department that the DAEO serves. This authority to render ethics advice is coupled with a regulatory protection, under 5 C.F.R. § 2635.107(b), which extends to employees who seek advice from the DAEO and rely on such advice in good faith. If an employee is found to have violated an ethics rule or regulation, having relied in good faith on the advice of the DAEO or the DAEO's designee, the employee is afforded protection against administrative disciplinary action under 5 C.F.R. § 2635.107(b).

of the person to whom the appearance of conflict applied. This compartmentalization of roles between the Ethics Office and the SOL in the ethics arena was never clearly communicated to the requesters of ethics advice.

Neither was the distinction between a violation of law or regulation, as opposed to the potential for the *appearance* of a conflict of interest, clearly communicated to the requestors of ethics advice. The advice rendered by the SOL attorney was based on "enough information to answer the pertinent questions," placing the requesters of ethics advice in a position of responsibility for both knowing and asking the correct questions. Therefore, if a requester asked, "Can I do…?", and, based on the facts presented, the SOL attorney determined that no violation of law or regulation would result, the answer was, "Yes." In many instances, however, the appropriate question is not, "Can I do…?" but "Should I do…?" If the provider of advice neither raises nor answers such an appearance question, the requester is left to his or her own, often ill-equipped, judgment.

Further complicating the state of ethics in the Department, DOI regulations provide that ethics advice may be sought from either the SOL or the Ethics Office.[40] Thus, the Department had an Ethics Officer who did not provide legal advice but served, rather, as a "management advisory tool," and a legal advisor who was viewed by senior political appointees as the Department's ethics advisor but who viewed himself, rather, as a "sounding board" who opined only on clear violations, the black and white, but generally did not render advice on whether an appearance of conflict of interest might arise, that vast grey area in which most ethics issues dwell. Nonetheless, most senior officials – including Deputy Secretary Griles – consulted the SOL attorney for advice, believing him to be *the* ethics advisor for the Department. Years of past practice and appearance bolstered, rather than dispelled, this mistaken inference.

As such, the stage was set for the events that unfolded in regard to the recusals of Deputy Secretary J. Steven Griles and his participation in the various meetings and matters chronicled elsewhere in this report. The dismal state of the ethics program at the Department combined with the tremendous potential for conflicts of interest that accompanied many of the DOI political appointees – but particularly Deputy Secretary Griles – merged into the making of a self-fulfilling prophesy.

Process, Recusal, and Advice

Even before his nomination to be the DOI Deputy Secretary, Mr. Griles' experience in lobbying for the oil, gas, and coal industries was renowned. This background, in considerable part, was why he was qualified for the job. At the same time, it represented an extreme in the "spectrum of complexity" for potential, inherent conflicts of interest in Mr. Griles' performance of duties in the very job for which he was uniquely qualified. The real challenges that Mr. Griles would face as DOI Deputy Secretary may have been underestimated even by Mr. Griles himself. Thus, a true understanding of the ethical quagmire in which the Deputy Secretary now finds himself must be viewed in the context of the intricate ethical challenges with which he was confronted, above and beyond those of the typical political appointee.

[40] 43 C.F.R. § 20.103

Upon nomination, Mr. Griles' lobbying background came under public scrutiny and was vetted through the required entities – namely the White House, the DOI Office of Ethics, and OGE. Typically, a candidate will prepare disclosure documents with the assistance of the Ethics Office for the agency or department to which he or she was nominated. In Mr. Griles' case, the preparation of his Financial Disclosure Statement and an attendant severance agreement is somewhat unclear.

Mr. Griles recalls that these documents, as well as his recusal letters, were prepared by the former DAEO. Mr. Griles said that he relied totally on DOI's Ethics Office and was not assisted by private legal counsel in this matter.

The former DAEO's recollection differs considerably. She denied that she had ever seen Mr. Griles' financial disclosure statement, saying that Mr. Griles and his attorney and accountant drafted several disclosure forms in an attempt to satisfy the requirements of OGE. The former DAEO did have knowledge about Mr. Griles' controversial severance agreement, however, and said that a number of proposals were "floated" with OGE.

By whomever prepared, these documents were eventually cleared through the DOI Ethics Office and the White House and sent to OGE, where they were similarly approved. Thus, they became the official documents of record relative to the need for Mr. J. Steven Griles to recuse himself from certain matters and certain parties that would come before DOI.

Unfortunately, Mr. Griles was not sufficiently briefed by either the Ethics Office or the SOL about his obligations under these agreements. Therefore, Mr. Griles, returning to public service after being immersed in the oil, gas, coal, and mining industries for nearly a decade, launched into his role as DOI Deputy Secretary, armed only with his lay understanding that he was precluded from being involved in any particular matter involving specific parties that he had worked on at his lobbying firm.

Mr. Griles' lax understanding of his ethics agreement and attendant recusals, combined with the lax dispensation of ethics advice given to him, resulted in lax constraint over matters in which the Deputy Secretary involved himself. Even after allegations against Mr. Griles were reported in the media, he continued to be afforded narrowly-crafted, permissive advice that answered only the "Can I do…?" question and failed to address the "Should I do…?" question.

The effort on the part of the Ethics Office has certainly increased since the departure of the former DAEO. The present Ethics Office has made strides in raising the awareness of ethics issues through training courses and routine briefings, it has endeavored to improve record keeping and file management, and it has begun to replace the reactive posture of the former office with a more proactive stance. Nonetheless, it still lacks the gravitas to exercise any meaningful influence over the administration of the ethics program Department-wide or over the conduct of senior DOI officials.

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Recusal Agreements and Compliance

On April 7, 2003, Senator Joseph I. Lieberman wrote the Inspector General, requesting that the OIG undertake an assessment of DOI's processes for ensuring compliance by high-ranking officials with recusal agreements. In his letter, Senator Lieberman asked six general questions.

Because the correct answers to the Senator's questions and the answers to the questions as they apply to Deputy Secretary Griles differ in many ways, a comparison is made when necessary to fully answer the Senator's inquiry. The state of the DOI ethics program lends further insight into the ethics environment at the time of Mr. Griles' arrival in 2001, as do the program and process that purported to serve him since that time. The culmination is a telling account of a political appointee who faced an enormous spectrum of complexity in the potential for conflicts of interest and entered the Department at a time when the very people and institutions responsible for advising and protecting him were utterly unequipped to do so.

1) **Who is responsible for ensuring compliance with recusal agreements?**

Without exception, those we interviewed agreed that the recused official is ultimately responsible for ensuring compliance with a recusal agreement.

2) **What is the process for identifying activities subject to a recusal agreement and in which an individual should not participate? At what stage does this occur? What process applies to activities which are not specifically subject to the terms of an agreement, but from which an official should be recused?**

The DOI Ethics Office described the process for identifying activities subject to a recusal agreement and in which an individual should not participate as beginning prior to the time of nomination. The potential nominee (recused official) prepares public financial disclosure forms either with the help of the agency ethics office or with the assistance of a private attorney. Those forms are provided to the White House Counsel's Office, which, in turn, provides them to the agency's ethics office and OGE for review. The agency ethics office, in consultation with the recused official, OGE, and the White House Counsel's Office, is responsible for identifying financial interests or other matters that may indicate the existence of an actual or apparent conflict of interest under Title 18 of the United States Code and for drafting an ethics agreement. The ethics agreement outlines steps that the Recused Official will take to ensure compliance with the terms of the agreement. Activities that are not specifically subject to the terms of an agreement but from which an official should be recused are addressed and handled later on a case-by-case basis.

The other government ethics offices we benchmarked described essentially the same process with only some minor procedural differences.

In Deputy Secretary Griles' case, we could not determine who prepared his ethics agreement. Mr. Griles remembers that the Ethics Office prepared the agreement. The former DAEO recalled that Mr. Griles and his attorney or accountant prepared the agreement.

Subsequent to the agreement being approved, and Mr. Griles' confirmation, however, Mr. Griles and his designated screeners were responsible for ensuring that he was not involved in matters from which he should be recused.

3) How is compliance with the terms of a recusal agreement or statement monitored? When violations are noted, what action is taken and by whom?

The DOI Ethics Office explained that initially, within 90 days of the date of confirmation, the recused official must provide evidence that he/she is in compliance with the terms of the ethics agreement. OGE reviews this evidence and signs off on the disclosures and recusals, verifying that the individual is in compliance with his/her ethics agreement. Subsequently, the recused official has the primary responsibility for compliance with the terms of a recusal agreement. When violations are brought to the attention of the Ethics Office, the Ethics Office refers the violations to the Office of Inspector General. When violations are brought to the attention of the OGE, OGE refers them to the Secretary of the Interior.

In Mr. Griles' case, he and his screeners were responsible for ensuring that he was not involved in matters from which he should be recused. As evidenced by the body of the attached report, alleged violations were referred to and investigated by the Office of Inspector General. DOJ and OGE are the appropriate bodies to opine on whether a violation has occurred or not, as they have in this matter. OGE and the Secretary of the Interior are also the determining entities for appropriate sanctions. If they cannot agree, the White House Counsel is consulted.

4) How are such agreements treated and implemented with regard to the role of individuals such as confidential assistants, deputies, or other individuals acting on behalf of (or appearing to act on behalf of) an official who is recused?

Confidential assistants, deputies, or other individuals acting on behalf of (or appearing to act on behalf of) a recused official are expected to be familiar with the recusals and ethics agreements pertaining to the recused official. The recused official is responsible for ensuring that these "screeners" or "gate keepers" know and understand those matters in which the recused official is prohibited from participating. The present Ethics Office seeks to train screeners in the same manner as they train the recused official, and offers assistance as needed, especially regarding recusals. Screeners, however, are responsible for seeking guidance from the Ethics Office if they have questions.

In Mr. Griles' case, neither the recused official nor his screeners received adequate training or reliable advice. The Ethics Office and SOL made little attempt to actively assist Mr. Griles to avoid potential conflicts and paid little attention even to the potential for appearance problems until the onslaught of public criticism erupted.

In the wake of the public scrutiny, Mr. Griles developed a better appreciation for the appearance factors, secured a more careful and rigorous screener, and now routinely seeks the advice of the DOI Ethics Office.

5) What is the role of DOI's Ethics Office in these matters? To whom does the office report? Does it have adequate authority and staff to fulfill its responsibilities? What is the status of funding of this office?

The role of the DOI Ethics Office in recusal matters is to provide training and advice. The Ethics Office at DOI had been located in the Office of the Assistant Secretary for Policy, Management and Budget, until it was recently relocated under SOL. The present DAEO told us that the Ethics Office has had a series of "ups and downs" in its authority and staffing, especially with regard to management's support. She said that recent events have provided the Ethics Office with more visibility, and she believes that the Ethics Office is now more accepted as a necessary program to assist the Department.

The authority of the Ethics Office remains in flux. Its position in SOL has not been solidified and its authority remains bifurcated with the regulatory reference allowing ethics advice to be sought either from the Ethics Office or SOL, generally. This directive is even more confusing now that the Ethics Office resides in SOL.

The Department requested and received $395,000 in its fiscal year 2004 budget for the Ethics Office. For fiscal year 2005, the Department has requested an additional $276,000. In our opinion, the Ethics Office still remains inadequately staffed – both in numbers and expertise – and underfunded, relative to the size of the Department for which it is responsible. It also lacks the strength of leadership and the depth of knowledge and experience that would be called for in a Department of this size, particularly with the range and complexity of ethics challenges with which it is faced.

6) When allegations are made by employees or outside parties regarding violations, how are they treated?

When allegations of ethics violations are made by employees or outside parties, the Ethics Office will handle the matter in one of two ways: On purely regulatory or administrative issues, the Ethics Office strives to obtain as much pertinent information as possible in order to develop an analysis of the allegations; in the case of violations of ethics agreements, allegations are generally referred to the Office of Inspector General for investigation.

Conclusion

Framed in the context of a train wreck waiting to happen, the Department of the Interior was presented with its most complex set of ethical issues with Mr. J. Steven Griles' appointment, at a time that, following years of neglect, demise, and compartmentalization, the ethics program was wholly incapable of addressing them.

As with most political appointees, Mr. J. Steven Griles likely viewed himself as an honest advocate of his administration's agenda. Since political appointees tend to believe that they are good people doing good things for the American public, they sometimes characterize any reasonable review or critique of their ethical behavior as prompted by partisan politics. The federal ethics rules are designed, when properly executed, to both guide and protect the well-intentioned political appointees. Fortunately, the threshold for the criminal ethics statutes is high enough to prevent most appointees from ever reaching it. The most difficult area, however, is the expansive gray area in between, that of "appearances."

Time and time again, the Office of Inspector General has heard from those charged with providing political appointees at the Department with ethical advice that appearance concerns are left to the appointee, reasoning that the appointee is in the best position to make those determinations. This myopic view presumes that the neophyte political appointee fully understands not only the federal government's byzantine ethical standards but also fully appreciates and understands the "fishbowl" mentality of Washington, D.C.

By answering ethics questions from a purely legal perspective, the provider of such advice builds in an inherent defense, should such advice subsequently fail to protect. The resulting disservice to a political appointee is profound. After all, it is not the career of the ethics official or advising SOL attorney that is on the line.

Between the Ethics Office and SOL, the combined failure of the ethics "team" in the Department to provide rigorous ethics advice to the political leadership – leaving them, instead, to assess appearance concerns from their own, subjective perspective, rather than that of the "reasonable person" – is, at once, both cowardly and disingenuous. Unfortunately for the appointee, the "reasonable person" standard is a much harsher judge of their conduct than is their well-intentioned subjective perspective. And thus, Mr. Griles and others now find themselves in a highly defensive posture against a cacophony of charges – even if no actual conflicts are found, the cries against the appearance of conflicts of interest drown out any acquittal – when solid, courageous, thorough advice at the outset might well have prevented these appearance problems altogether.

The wholesale failure of the ethics program at the Department emanates from a fundamentally flawed design crafted over time by a cast of negligent architects. Unfortunately, it also threatens to leave a trail of fallen political appointees in its wake.

OIG Recommendations

1. There needs to be a singular voice of authority on ethics in the Department. We believe the DAEO should be the head of the Office of Ethics for the Department.

    a. The DAEO should be a full-time, experienced ethics professional, but need not be an attorney.

    b. The DOI regulation referring employees to either the Ethics Office or the SOL should be clarified.

c. The SOL Division of General Law should no longer be in the business of rendering ethics advice. If attorneys are designated to give ethics advice, they should be assigned to the Ethics Office.

2. Political appointees should only obtain ethics advice from the DAEO or the designated Assistant DAEO.

3. Ethics advice must be proactive.

    a. Ethics advisors should ask all questions necessary to answer both the "Can I" as well as the "Should I" questions.

    b. Ethics advisors must be willing to say the word "NO!" – even to high-level political appointees.

4. The Secretary and senior DOI leadership should be visibly supportive of this new ethics structure.

    a. The Secretary and other appropriate senior staff should be briefed regularly on ethics issues confronting the Department.

5. The Office of Ethics needs to be bolstered by:

    a. More funding.

    b. Additional staff, including a leader with a breadth and depth of ethics expertise. Staffing should be evaluated in terms of other federal agencies with like size and complexity of responsibilities.

    c. The Office of Ethics should have greater input and control over the bureau ethics counselors, who should all be full-time ethics professionals as opposed to providing ethics advice as a collateral duty.

    d. A well-maintained system of record-keeping.